

The right to work

As a member of the United Nations and International Labour Organization, the Republic of Moldova promotes a national policy refractory to discrimination, both in the use of labour force as well as in the labour relationship itself.

Following the international treaties ratified (UN Convention on the elimination of all forms of discrimination against women, Convention no. 111 and 100 of the ILO) and national regulations previously adopted, Moldova proclaims non-discrimination as the basic principle in all spheres of social life.

Thus, the Constitution of the Republic of Moldova stipulates in art. 16, paragraph (2) that all citizens are equal before the law and public authorities, irrespective of race, nationality, ethnic origin, language, religion, sex, political affiliation, wealth or social origin.

In the context of the developments registered in the reporting period, it should be mentioned the adoption, on 9 July 2010 of Law no. 168 by which the article 9 paragraph (2) and article 10 paragraph (2) of the Labour Code have been supplemented by additional obligations for employees and employers. Thus, employees are now required to:

- to have a non-discriminatory behavior towards other employees and employer; and
- respect the right to dignity at work of other employees.

For employers, were established the following new obligations:

- to ensure equal opportunities and equal treatment to all persons in employment according to the profession, orientation and training upon promotion, without any discrimination;
- to apply the same criteria in assessing the quality of work, sanctioning and dismissal;
- to introduce in the unit's internal regulation provisions on prohibiting discrimination on any criterion and sexual harassment;
- to ensure the dignity of employees at work.

In turn, the Labour Code, in the article 5 establishes the basic principles to regulate the labor relations and other relations directly related to them:

- Labor freedom, including the right to a freely chosen or accepted job, the right of the employee to dispose of its ability to work, the right to choose profession and occupation;
- Prohibition of forced (compulsory) labor and discrimination in labor relations;
- Ensuring the right of every employee to fair working conditions, including working conditions that meet protection and occupational hygiene, and the right to rest, including the regulation of working time, the granting of annual leave, daily rest breaks, the rest days and non-working holidays;
- Equality of rights and opportunities for employees;
- Ensuring equality of employees, non-discrimination in promotion at work, taking into account labor productivity, qualifications and length of service in that work, as well as participation in vocational training, retraining and refresher courses.

The article 8 of the Code expressly establishes that in the employment relationship acts the principle of equality of rights of all employees and any direct or indirect discrimination of the employee on grounds of gender, age, race, skin color, ethnicity, religion, political affiliation, social origin, residence, disability, HIV / AIDS, trade union membership or activities, and other criteria unrelated to its professional qualities is prohibited.

The article 47 of the Code prohibits the ungrounded refusal of employment and any other direct or indirect limitation of rights or the establishment of any direct or indirect advantages on completion of the individual employment contract based on gender, race, ethnicity, religion, residence, political opinion or social origin.

In the context of the above mentioned rules, according to article 9 paragraph (2) of *the Labour Code*, employees must:

- have a non-discriminatory behavior in relation to other employees and the employer; and
- respect the right to dignity at work of other employees.

For employers, according to the article 10 (paragraph (2) of the *Labour Code* are established the following obligations:

- to ensure equal opportunities and equal treatment to all persons in employment according to profession, orientation and training upon promotion, without any discrimination.
- to apply the same criteria of assessment of the quality of work, sanctioning and dismissal;
- to introduce in the unit's internal regulation provisions on prohibiting discrimination on any criterion and sexual harassment;
- to ensure the dignity of employees at work.

Furthermore, the Code contains a series of preferential rules applicable only to certain categories of employees, including women, people with family obligations, etc. Given that, these are people requiring for an increased social and legal protection, in the sense of the Code the enforcement of preferential norms targeting them does not constitute discrimination. Also, according to article 8, paragraph 2 of the Code; it does not constitute discrimination the establishment of certain differences, exceptions, preferences or rights of employees, which are determined by specific requirements of a job established by the law into force.

In this context, it is to be mentioned the prohibitive rules designed to prevent an eventual abusive behavior against women and persons with family bonds. In the category of rules are:

- Prohibition of refusal of employment or reduction of wages for reasons of pregnancy or the existence of children aged up to 6 years (art. 247 of the Code);
- Prohibition of dismissal of pregnant women and workers who have or take care of children aged up to 6 years, with certain exceptions, related in particular to breach of labor discipline (art. 251 of the Code);
- Prohibition to set up a probation period for pregnant women (art. 62 of the Code), etc.

The principle of non-discrimination on the grounds of race, nationality, ethnic origin, language, religion, sex, political affiliation, wealth or social origin is also established as background in the application of the *Law on employment and social protection of persons seeking employment* no.102-XV of 13 March 2003. Being fixed in the article 8 of the Law, it concerns both passive measures on the labor market, including the payment of compensations for limited periods, as well as the active ones (addressed to persons seeking employment and employers), that include measures to boost employment, vocational guidance and training of persons seeking employment as well as employment mediation services rendered by the structures of the National Agency for Employment.

Also, we communicate that on 25 May 2012 was adopted the Law no. 121 on ensuring equality, which aims to prevent and combat discrimination as well as to ensure equality to all persons in the Republic of Moldova in the political, economic, social, cultural and other spheres of life, irrespective of race, color, nationality ethnic origin, language, religion or belief, sex, age, disability, political affiliation or any other similar criteria.

The article 7 of Law 121 is entirely dedicated to discrimination in the labour field. For information, we reproduce below its provisions.

Law on ensuring equality – art.7:

“Article 7. Prohibition of discrimination in employment

(1) It is prohibited any distinction, exclusion, restriction or preference based on criteria established by this Law, which have the effect of limiting or undermining the equality of

opportunities or treatment in employment or dismissal, proper work and training. Prohibition of discrimination based on sexual orientation applies in recruitment and employment.

(2) It is considered discrimination the following actions of employer:

- a) Placing advertisements for employment with requirements and criteria that exclude or favor certain people;
- b) Groundless refusal to hire a person;
- c) Groundless refusal to enroll certain persons to vocational training courses;
- d) Unequal remuneration for the same type and / or workload;
- e) Different and unreasonable distribution of workload, fact arising from a less favorable status given to certain individuals;
- f) Harassment;
- g) Any other action that contravenes the Law.

(3) Refusal of employment, admission to vocational training courses or promotion of persons is considered ungrounded if:

- a) Requires the submission of additional documents besides those legally established;
- b) Alleging that the person does not meet the requirements that have nothing to do with the professional qualifications needed for the practice of that profession or is required the compliance with any other illegal requirements having a similar effect.

(4) The employer is obliged to place in a place accessible to all employees the Law that guarantees the equality of opportunity and treatment at work.

(5) Any distinction, exclusion, restriction or preference about a particular job does not constitute discrimination where, by the specific nature of the activity in question or the conditions under which this activity is carried out, there are certain genuine and determinant occupational requirements, providing that the requirements are legitimate and proportionate.

(6) Within the professional activities of religious cults and their component parts it is not considered discrimination the differential treatment based on religion or belief of a person when religion or belief constitutes an essential occupational requirement, legitimate and justified. "

Wages

The article 10 of the **Labour Code** sets the basic obligation of the employer to ensure equal payment for the work of equal value. In turn, the article 128 of the Code stipulates that the establishment and payment of salary does not admit any discrimination on grounds of sex, age, disability, social origin, family status, ethnicity, race or nationality, political opinions or religious beliefs, membership or activity in trade union. Similar provisions are also stipulated in Art. 27 of Law on Wages No. 847-XV of February 14, 2002.

Working conditions

The national basic Act regulating legal relations in the field of safety and health at work is now the Law on safety and health at work no. 186-XVI of 10 July 2008. Developed in order to transpose into the national legislation the International and European standards in the field of safety and health at work (Convention no. 155 of the ILO, the European Directive 89/391 / EEC), this law does not contain provisions that could be differently applied to people of different sex.

The Law has as purpose the establishment of measures to increase the level of safety and health of workers at the workplace. It sets out the general principles on prevention of occupational risks, protection of health and safety of workers, elimination of risk factors or the unexpected ones, as well as the rights and obligations of the parties of the labour relationship. Throughout the content of the Law on the recruitment of employees is used the concept of *worker*, which is defined in the article 1, as *any person* employed under the law, by an employer, including trainees and apprentices.

The right to associate in trade unions

According to article 42 of *the Constitution of the Republic of Moldova*, any employee has the right to create and to join trade unions for the protection of its interests.

In accordance with article 1 of the Labour Code, an employee is any "natural person (man or woman) who performs a work under a particular specialty, qualification or a certain position, for a salary, based on the individual employment contract".

Ensuring the compliance with legislation

Ensuring the compliance with the legislation is done through the ordinary mechanisms - state and public control over the compliance with labor laws (undertaken by the State Labour Inspectorate and Trade Unions), ensuring access to justice and the establishment of certain penalties for the violation of internal rules adopted under international regulations.

In this context, we communicate that the employer or any other person guilty for discriminatory actions related to employment or work activity may be subjects to liability under art. 176 of the Criminal Code, which provides for sanctions for violations of the equal rights of citizens:

Criminal Code – article 176:

“Article 176. Violation of the right to equality

(1) Any distinction, exclusion, restriction or preference of rights and freedoms of a person or group of persons, any support of discriminatory behavior in the political, economic, social, cultural and other spheres of life, based on criteria of race, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political affiliation or any other criteria:

- a) Committed by a person holding a position of responsibility;
- b) That caused huge damages;
- c) Committed by placing discriminatory messages and symbols in public places;
- d) Committed on two or more criteria;
- e) Committed by two or more persons,

is punished by a fine from 400 to 600 conventional units or by unpaid community work from 150 to 240 hours or by imprisonment for up to 2 years, in all cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for a period from 2 to 5 years.

(2) Promotion or support of the actions specified in paragraph (1), committed through mass-media,

is punished by a fine from 600 to 800 conventional units or by unpaid community work from 160 to 240 hours, for legal entities by a fine in the amount of 1000 to 3000 conventional units with the deprivation of the right to practice certain activities for a period of 1-3 years.

(3) The actions specified in paragraph (1) and (2) that caused because of carelessness the death or suicide of the person;

are punished by imprisonment from 2 to 6 years, by a fine applied to legal entities, in the amount from 1000 to 3000 conventional units with the deprivation of the right to practice certain activities for a period of 1-5 years or by the liquidation of the legal entity. "

Also, in order to enforce the Law on ensuring equality, it was adopted the Law no. 306 of December 26, 2012 on amending and supplementing certain legislative acts, by which in the Contravention Code was introduced a new article, which stipulates penalties for breaching equality in work:

Contravention Code – art. 54²:

„ **Article 54²**. Violation of equality in the labour field

Any distinction, exclusion, restriction or preference based on grounds of race, nationality, ethnic origin, language, religion or belief, sex, age, sexual orientation, disability, opinion, political

affiliation or any other criterion, which has the effect of limiting or undermining equality of opportunity or treatment in employment or dismissal, direct work and training, performed by:

- a) Placing advertisements for employment, indicating requirements and criteria that exclude or favor certain people;
- b) Groundless refusal to hire a person;
- c) Groundless refusal to enroll certain persons to vocational training courses;
- d) Unequal remuneration for the same type and / or workload;
- e) Different and unreasonable distribution of workload, fact arising from a less favorable status given to certain individuals;

is punished by a fine from 100 to 140 conventional units for natural persons and by a fine from 200 to 350 conventional units for people holding positions of responsibility, by a fine from 350 to 450 conventional units for legal entities.

(2) Harassment, namely the expression by the employer of any conduct based on grounds of race, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political affiliation or any other criterion which leads to creating an intimidating, hostile, degrading, humiliating or offensive environment at work

is sanctioned by a fine from 130 to 150 conventional units for natural persons and by a fine from 250 to 400 conventional units for people holding positions of responsibility. "

The same law establishes that the offense by violating equality in labour field is to be ascertained by the Council on the prevention and elimination of discrimination and ensuring equality, which will forward the drawn minutes to the court in charge of the examination of the case.

Law no. 298 on the activity of the Council on the prevention and elimination of discrimination and ensuring equality was adopted in the same period - on December 21, 2012. According to it, the Council is a collegial body with the status of legal entity of public law, financed from the state budget, which aims at protecting against discrimination, ensuring equality and restoring the rights of all people discriminated. Council examines complaints, contributes to the amicable settlement of conflicts arising from discriminatory acts committed and finds the violations committed in the field.

The discriminatory dismissal

In case when discrimination on grounds of sex takes the form of illegal transfer or dismissal, according to art. 89 of the Labour Code, the employee illegally transferred to another work or illegally dismissed from work is restored in the workplace by direct negotiations with the employer or by the decision of the court. On examining the individual labor dispute by the court, the employer is obliged to prove the legality and indicate the grounds for transfer or dismissal of the employee.

Also, according to article 90 of the Labour Code, the employer is obliged to repair the damage caused to employee who was illegally transferred or dismissed, including:

- a) the mandatory payment of a compensation for the whole period of forced absence from work in an amount not less than the average salary of the employee for that period;
- b) compensation of additional expenses related to appeal of transfer or dismissal from work (consulting specialists, court costs etc.);
- c) compensation for moral damage caused to the employee.

Instead of reinstatement at work, the parties may reconcile and in case of dispute - the court may charge the employer with the employee's consent and in its benefit, by compensation additional to the amounts mentioned above in the amount of at least 3 month average salaries of the employee.

Labour inspections

State Labour Inspectorate (SLI) takes action to prevent and combat illegalities in the field of labor. Throughout January - July 2016, in terms of compliance with laws and regulations on labor

relations, safety and health at work, there were conducted 2692 inspection visits, mainly in the public sector.

There had been monitored 2223 units with a number of 94,3 thousand employees, including 57, 6 thousand women (of which 19150 from rural areas) and 14 minors. Of the total number of inspection visits, 2194 were planned visits and 498 unannounced inspection visits, of which 13 – were about investigating accidents at the workplace. As a result of inspection actions were drafted inspection minutes, where had been noted 27413 violations and deviations from the labour laws and regulations, of which 14335 violations in labor relations and 13078 - in security and health at work.

In the context of monitoring the procedure and terms of payment of wages in the real sector, the labor inspectors undertook inspection visits to 34 companies, which admit outstanding salaries (8.6 million MLD - to 1310 people, including 289 women). By labor inspectors were established terms for the liquidation of wage arrears. It was concluded 15 minutes on offense on contravention. It was reported, they have already liquidated salary arrears amounting 932, 3 thousand MDL.

For the realization of the Action Plan to minimize the practice of payment of wages "in envelopes" and undeclared work, approved by the Government Decision no.477 of 28.06.2011, were taken action through control visits to 34 businesses and 13 natural persons employers. 98 people were identified as working without being legally employed, including 27 women and 11 minors. By labor inspectors were concluded 43 minutes on offense that are embedded in total minutes on offense. As a result of actions taken - 13 people were restored in their rights, legalizing their relations with employers.

According to the provisions of article 34 of Law No. 60-XIX of 30.03.2012 on social inclusion of people with disabilities, there have been visited 993 units with a staff of 20 and more people. Within inspections the labor inspectors found that, for the employment of persons with disabilities in 105 units were reserved 315 jobs. In 133 units work 420 people with disabilities. 57 units have the register with the requests for employment of the persons with disabilities. 8 units have informed the National Agency for Employment about jobs reserved. Labour inspectors submitted to the units prescriptions for compliance with the provisions of above mentioned law.

In the same period were considered and taken steps to settle 1486 complaints received from citizens, including 576 women, 770 men and 140 collective. Thus, 1312 men and 931 women, including 202 from rural area have addressed various issues on labor relations.

Of the total number of petitions examined 48% - are issues related to salary, 13% - cases of dismissal / reduction of staff, 7% - about undeclared work, 5% - issues related to refusal / non-payment of holiday and social leave, 4% - alleges violations related to the record and filling in the workbooks, 3% - are deviations from the law in concluding individual employment contract, 1% - targeting issues on the establishment of appropriate working conditions and 1 % - violations of working hours and work injuries, 17% - raises other issues. Also, there were examined 519 referrals from other public authorities and legal entities. After examining the rights of 1010 people were restored. Simultaneously, the labor inspectors had granted consultative and methodological assistance to 864 citizens.

As a result of non-compliance of the units checked with the provisions of labor law, the labor inspectors have completed and submitted for review to the court 106 minutes on offense.

At the territorial labor inspections were submitted for registration under article 33, paragraph 1 of the Labour Code, 730 collective agreements.

According to article 10, paragraph (2), letter c) of the Labour Code, throughout that period, at the territorial labor inspections was sent for registration the staff of 16683 units with personnel of 320266 people.

In order to raise awareness, inform and consult those interested in the correct and effective implementation of legislation and to ensure transparency of inspection activities were carried out public information actions through various media outlets about the most effective methods of

applying the Labour Code, as well as the Law on Safety and Health. Citizens were informed about the activity of SLI and the methods of compliance with labor law provisions via local and central mass-media, being published 52 articles with the participation in 30 television and 12 radio talk shows.

There have been realized 219 measures on information and awareness in the field of labor relations, safety and health within the seminars initiated by labor inspectors. Also, SLI employees participated in meetings, round tables organized by the decision makers in the territory, branches of territorial trade unions.

Labor inspectors organized seminars to inform the youth on labor laws, safety and health at work. 2401 young people from 92 institutions were informed on the provisions of labor legislation within the meetings organized with the graduates of the undergraduate institutions. At the Job Fairs for Youth held within the Forum of trades / professions, the labor inspectors have contributed by providing information and advice to visitors interested in labor legislation and labor relations. This is an advantage both for people looking for a job as well as employers.

