

National Labour Law Profile: Lithuania

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Historical Background

At the end of the 18th century, Lithuania was annexed by the Russian Empire. During World War I, Lithuania's occupation by German troops in 1915, and the subsequent collapse of the Russian imperial government, as well as a growing nationalist movement, led to the declaration of independence on 16 February 1918.

The first democratic constitution was adopted in August 1922, but the Government was overthrown in a military coup in December 1926. Antanas Smetona established an authoritarian regime which lasted until 1940.

The “Molotov-Ribbentrop Pact”, signed in August 1939 by Nazi Germany and the Soviet Union assigned spheres of influence in the area of the Baltic Sea. Lithuania, which was to be part of the German sphere of influence, was transferred to the USSR by the Nazi-Soviet Treaty of Friendship and Existing Borders signed later the same year. The Soviet Union established a military presence, and in 1940, Lithuania was forced to proclaim itself a republic of the Soviet and join the Union. Lithuania was later occupied by Germany, and at the end of the war, the USSR reclaimed Lithuania as a Soviet republic, with the agreement of the United States and Britain.

In March 1990, a new pro-independence parliament (the Supreme Council of Lithuania) elected Vytautas Landsbergis as de facto President of Lithuania and proclaimed the restitution of independence, making Lithuania the first of the Soviet republics to declare national rights. On 6 September 1991, the USSR Council recognised the independence of the three Baltic States. The last Russian troops withdrew in 1993.

Lithuania applied a modified version of the Soviet constitution, until a new constitution was adopted by referendum on 25 October 1992.

Lithuania became a member of NATO on 29 March 2004 and the European Union on 1 May 2004.

Constitutional framework

The [Constitution](#) of the Republic of Lithuania was adopted by referendum on 25 October 1992 (Published in: Valstybes žinios [State Gazette], 1992, No. 33–1014).

The Constitution has been amended 6 times. In 1996, in 2002 and in 2003 Articles 47, 84, 118, 119 were amended.

Lithuania is divided into 10 counties. Each county has a regional Governor appointed by the Government. There are 60 municipalities. 12 of them are of towns or cities. The Municipalities are managed by the Municipal Councils elected by universal suffrage for a four-year term and by a Mayor appointed by the Council.

Head of the State

Head of the State is the President. The President is directly elected by popular vote for a maximum of two five-year terms. The President can dissolve the Parliament (Seimas) if it refuses to appoint a new Government, or, at the latter's request, if the Parliament passes a vote of no confidence. If the President dissolves the Parliament (Seimas), the newly elected Parliament (Seimas) may by two-thirds majority vote of its members call early presidential election. The President can dismiss a Minister at the request of the Prime Minister.

Executive power

Head of the Government is the Prime Minister. The Prime Minister is appointed and/or dismissed by the President but only upon approval of the Parliament (Seimas). The President on the nomination of the Prime Minister appoints the Ministers. It allows describing the governmental type of Lithuania as rather parliamentary democracy.

Legislative power

The Legislative is one-chamber Parliament (Seimas). It consists of 141 Members of the Parliament who are elected on a partly proportional (70 seats), partly constituent (71 seats) system for a four-year term. The Parliament (Seimas) on two-thirds majority vote of its Members can take the decision to hold early elections.

The impact of international law in domestic law

The Constitutional provisions as well as the legal norms of the Law on International Treaties and norms of 22 June 1999 of the Labour Code 2002 mean that Lithuania's legal system is based on the monistic approach that incorporates international treaties into the internal law. According to Art.138 (3) of the Constitution the international treaties ratified by the Parliament (Seimas) shall be a constituent part of the legal system of the Republic of Lithuania. In case of conflict, Art.11 (2) of the Law on International Treaties establishes the primacy of international agreements over national legal regulations, which means that the provisions of the treaties prevail in case of inconsistency with the national legal acts enacted either at the moment of the ratification of such treaty or convention or later. Furthermore, the Labour Code of 2003 follows the same pattern and additionally establishes a possibility of direct application of international agreements in Lithuania. According to Art.8 (1) of the Labour Code where the international agreements of the Republic of Lithuania establish rules other than those laid down by the Labour Code and other labour laws of the Republic of Lithuania, the rules laid down in international agreements shall be

applied. Art.8(2) of the Labour Code stipulates that the international agreements of the Republic of Lithuania shall be directly applied to labour relations except in cases when international agreements establish that the application thereof requires a special regulatory act of the Republic of Lithuania. Of course, only self-executing provisions of the particular international agreement may be appropriate for direct application.

The Judiciary

The court system consists of local courts, district courts, the Court of Appeal and the Supreme Court. Judges of the Supreme Court are appointed by the Parliament (Seimas), while the judges of the Court of Appeals are appointed by the President upon approval of the Parliament (Seimas). The President appoints the judges of the district and local courts.

There is a system of specialised administrative courts for investigation of administrative litigations too. It consists of the district administrative courts, the Higher Administrative Court and the Highest Administrative Court. The Judges are independent in administering justice. According to Art.111(2) for the investigation of inter alia labour litigations, specialised labour courts “may be established” pursuant to the law. However, the necessity of the specialised labour courts system is at the very first phase of the discussions among the scholars. The [Constitutional Court](#) of the Republic of Lithuania is an independent judicial body with the authority to decide whether the laws and other legal acts adopted by the Parliament (Seimas) are in conformity with the Constitution and whether the legal acts adopted by the President and the Government do not violate the Constitution or laws. The President, the Government, no less than 1/5 of the Members of the Parliament (Seimas) and the courts have the right to apply to the Constitutional Court.

Labour rights in the Constitution

The Constitution lays down a certain number of labour rights:

Right to freely form societies, political parties and associations, provided that the aims and activities thereof do not contradict the Constitution and laws (Art.35 (3));

Right to freely choose an occupation or business (Art.48 (1));

Right to adequate, safe and healthy working conditions (Art.48 (1));

Right to adequate remuneration for work (Art.48 (1));

Right to social security in the event of unemployment (Art.48 (1));

Prohibition of forced labour, except military service or alternative service, as well as labour which is executed during war, natural calamity, epidemic or other urgent circumstances, or labour performed in places of confinement (Art.48 (3) – 48 (5));

Right to rest and leisure as well as to annual paid holidays (Art.49 (1));

Right to organise a trade union (Art.50 (1));

Right of trade unions to function independently (Art.50 (1));

Equality of the trade unions rights (Art.50 (1));

Right of the employees to strike in order to protect their economic and social interests under conditions and procedures established by law (Art.51).

Labour Regulation

Evolution of labour law

Until 1990 the legal regulation of labour relations in Lithuania was distinguished by imperativeness peculiar to the Soviet legal system. The basis of Lithuania's labour laws was the Soviet Labour Code adopted in 1972 and the allied laws that regulated almost all working conditions in details. Almost no place was left for the regulation of working conditions by the means of collective and individual agreements.

Essential political economic and legal reforms started after the restoration of the independence of Lithuania in 1990. Since 1990 the legal system has been reformed to meet the demands of the social and economic changes brought by the return to democracy and the free market economy system. The detailed imperative regulation of labour relations hampered the formation of a labour market, the development of market relations. Therefore, the reform of the national labour law was launched. The main aim of the reform was to transfer from the centralised and all-covering state imperative regulation towards more liberal contract regulation allowing the parties of individual and especially of collective labour relations to determine the working conditions by themselves by the means of agreements. The role of the state should be limited to set the minimum standards of labour rights and positions in one codified legal statement regulating labour relations – the new Labour code.

This task has been performed in a rather slow and contradictory way. It should be emphasised that at the very beginning of the reform (in 1991 and in 1994) the new drafts of the Labour Code were prepared but they were not adopted. The legislator chose another way *pro tempore* - to put aside the adoption of the Labour Code and start to enact separate laws regulating groups of the labour relations. Thus, within a historically very short period of time, namely, several years, the most important labour laws were adopted:

On 9 January 1991 – the Law on Wages;

On 4 April 1991 – the Law on Collective Agreements;

On 21 November 1991 – the Law on Trade Unions;

On 28 November 1991 – the Law on Employment Contract;

On 17 December 1991 – the Law on Holidays;

On 17 March 1992 – the Law on the Regulation of Collective Disputes;

On 7 October 1993 – the Law on Safety and Health of Employees and other laws.

These laws mostly kept the nature of a minimally corrected Soviet regulation to correspond only to the basic market principles and to the changes of public life, which were inevitable at the time of transition from the Soviet plan economy to free market. The process of adopting new laws, then amending them many times, supplementing, trying to make explanations and instructions more detailed without thinking about their integrity and interrelations with other legal normative acts led to a situation where the legal norms of the separate statements contradicted and competed with each other. Until 2003, entire institutions of the labour law such as individual labour disputes, labour discipline, and pecuniary liability were exceptionally regulated by the Labour Code of 1972 which, of course, did not correspond to the new economic relations.

The preparation of the third draft Labour Code was launched in 1998. The new Labour Code had to solve many problems. Some of them were related to the general base of Lithuania's labour laws, for example, what should be the sphere regulated by labour law? Should labour laws regulate the work of certain public servants, for example, in police and customs, as well as the work performance of self-employed persons or work based on membership in an enterprise, economic or agricultural association, etc, and to what extent? Referring to Lithuania's goal to accede to the European Union, the Labour Code was also foreseen as an instrument of transposition of many EC labour law directives into the Lithuanian legal system. The adoption of the third draft Labour Law took over three years. After long-lasting discussions with social partners, NGO's as well as discussions on the level of ministries, the draft Labour Code was presented to the Tripartite Council twice. Finally, the Parliament (Seimas) adopted the [Labour Code](#) by Law No. IX-926 (*Valstybes žinios*, 2002, No. 64-2569) on 4 June 2002. The Labour Code entered into force on 1 January 2003. Apart from the Law on Safety and Health of Employees of 7 October 1993 the Labour Code abolishes almost all labour laws adopted since 1990. The Labour Code as a unified act regulates collective as well as individual labour relations, in particular, the scope, tasks and principles of the application of labour laws, the rights of trade unions and representatives of employees in the sphere of labour, the conclusion and implementation of collective agreements as well as the liability of the parties, the solution of collective labour disputes including strikes, legal grounds of employment, conclusion, terms and termination of contract of employment, minimum wage as well as the conditions of remuneration for work, working time and rest periods, safety and health of employees, vocational training and in-service training, labour discipline, conditions and limits of pecuniary liability, supervision of and control over compliance with the main labour laws.

Other sources of labour regulation

According to Art.3 (1) of the Labour Code the sources of labour law are the Constitution of the Republic of Lithuania, international agreements of the Republic of Lithuania, the present Labour Code, other laws and regulations that are not contrary to the Code, as well as regulatory provisions of collective agreements.

The *Administrative regulations* play a rather supporting role in Lithuanian labour law. According to the doctrine developed by the Constitutional Court the administrative regulations are designed to implement the laws but not to impose the duties on individuals. The Labour Code follows this doctrine and sets strict pre-conditions and limits in order to minimise the possibility to regulate labour relations using administrative regulations:

"The Government resolutions and other regulations may regulate labour relations only in the cases and to the extent determined by this Code and other laws". (Art.3 of the Labour Code); "The provisions of the regulations of the Government, other state and municipal institutions, establishing for the employees conditions less favourable than those established by this Code and other labour laws, shall be invalid." (Art.4 (2) of the Labour Code).

Collective agreements are a source of law in the Lithuanian legal system but their role is rather unessential. Analysis of the greater part of Lithuanian labour law regulations

allows to draw the conclusion that there are many provisions in the labour laws on the determination or concretisation of working conditions by collective agreement.

However, in practice the laws adopted by the state or individual contracts of employment, rather provisions of collective agreements, regulate labour conditions (remuneration, working hours, annual leave, conclusion and termination of contract of employment etc.). It is universally accepted that the remuneration for work (except employees in the public sector) is dealt with in the contract of employment. There is no official data but we can assume that there is a very small percentage (approx. 3-5 per cent) of enterprises having a valid collective bargaining agreement.

Arbitration awards are not recognised as a source of law in Lithuania.

Judicial decisions: The Lithuanian legal system is principally based on the legal traditions of continental Europe. That is why the principal body of law is statutory and the doctrine of precedent has not been recognised in Lithuanian law. Nevertheless, in the last few years the importance of the decisions of the Supreme Court has increased dramatically. The local courts, district courts as well as the Court of Appeal shall “take into consideration” the interpretation of laws provided by the Supreme Court in the officially published decisions of the Supreme Court, as well as in the officially published reviews on the practice of application of the particular laws.

Contract of Employment

Concept and terms of the contract

Art. 94 of the Labour Code defines an employment contract as an agreement between an employee and an employer whereby the employee undertakes to perform work of a certain profession, speciality, qualification or to perform specific duties in accordance with the work regulations established at the workplace, whereas the employer undertakes to provide the employee with the work specified in the contract, to pay him or her the agreed wage and to ensure working conditions as set in labour laws, other regulatory acts, the collective agreement and by agreement between the parties.

The parties to a contract of employment must agree on the following substantive terms: the employee's place of work (a company, branch etc.), the work to be performed or position and remuneration. The contract of employment may not establish the terms on working conditions that are less favourable to the employee than those provided by the Labour Code, laws, other regulatory acts and the collective agreement.

Employment contracts must be in written form and in accordance with the model form established by the law. However, if an employee has actually started work pursuant to a verbal agreement with the employer, the employment contract is considered to be concluded and must be executed in written form. The employer shall register each employment contract or any amendments thereto in the book of registration of the employment contracts within the company.

Unlimited and fixed-term contracts of employment

Employment contracts may be concluded for an indefinite period of time or for a fixed period of time if work is of temporary nature. The Labour Code *expressis verbis* stipulates that normally a contract of employment shall be concluded for an indefinite period of time (open-ended employment contract).

The law prohibits concluding a fixed-term contract of employment if the work is of permanent nature except in the cases when this is provided by laws or collective agreements.

A fixed-term contract of employment may be concluded for a certain period of time or for the period of the performance of certain work but not for more than 5 years. A seasonal contract of employment shall be concluded for the performance of seasonal work that due to natural and climatic conditions is not performed all year round but during certain periods (seasons) not exceeding 8 months (in the period of 12 successive months) and is entered to the list of types of seasonal work. A temporary contract of employment is a contract concluded for a period not exceeding 2 months. The Government establishes the list of types of seasonal work, the circumstances under which a temporary employment contract may be concluded and other peculiarities of both types of contracts of employment.

If the term of a contract of employment has expired, whereas employment relations are actually continuing and neither of the parties has, prior to the expiry of the term, requested to terminate the contract, it shall be considered extended for an indefinite period of time.

Special contracts of employment

The Labour Code enumerates several types of contracts of employment:

Contracts on additional work (an arrangement to perform certain additional duties or certain additional work (not agreed in the contract) at the same workplace);

Contracts on a secondary job (a job at another workplace under the contract of employment with another employer);

Contracts with home workers (work functions are performed at home);

Contracts on the supply of personal services (employee undertakes to supply personal household services to his or her employer).

However the Labour Code contains no significant stipulation of this contract and provides the Government with the competence to set the peculiarities of the above-mentioned types of contracts of employment.

Probation

Upon concluding a contract of employment, the parties may agree on a probation period that shall not be longer than 3 months. A probation period shall not include the periods when an employee was absent from work.

There are two different types of probation: probation may be set to assess the suitability of an employee for the agreed work as well as, at the request of employee, the suitability of this job for him or her. The condition concerning probation shall be set in an employment contract. A trial to assess the suitability of an employee for the agreed work shall not be established when employing persons under 18, when transferring employees by the agreement between employers, when recruiting to a position by official tender or elections as well as those who have passed the qualification examinations for a position.

If an employer recognises that the results of a probation to assess the suitability of an employee are unsatisfactory, he or she may dismiss the employee from work before the expiry of the probation period by giving the employee written notice thereof 3 days in advance without paying him or her a severance pay. If probation is set to assess the suitability of work for an employee, the evaluation of the probation depends on the employee's will. The employee shall be entitled to terminate the employment contract during the probation period by giving the employer written notice thereof 3 days in advance.

If the employee continues working upon the expiry of the probation period, the termination of the employment contract shall be allowed only on general grounds. During a trial period an employee shall be subject to all labour laws.

Suspension of the contract of employment

Only law may establish grounds for suspension. First, an employer shall suspend an employee from work without paying him or her any wage on the written request of officials or bodies entitled to suspension by law (courts, prosecutors, interrogators). It shall specify the period for which the employee is suspended, the reason and the legal ground for suspension. A suspended employee shall, with his or her consent, be transferred to another work, provided such transfer does not contradict the purpose of suspension. Furthermore, the Labour Code obliges an employer not to allow an employee to work the whole working day (shift) and shall suspend his or her wage if an employee comes to work intoxicated with alcohol, narcotic or toxic substances.

Upon expiry of the period of suspension, the employee shall be reinstated in his or her former position, as long as suspension has provided no grounds for termination of the contract of employment.

If the employee has been suspended from work (position) on the request of the employer or officials from duly authorised bodies without proper cause, he or she shall be entitled to claim damages in accordance with the procedure prescribed by law. However, there is no other stipulation aiming to protect workers' earnings during suspension.

Termination of the contract of employment

Until quite recently it was a distinctive feature of Lithuanian labour law that termination of the contract of employment was a complicated and troublesome procedure. Traditionally in the system of soviet labour law the rights and interests of workers were strongly protected and the possibilities to dismiss an employee were

restricted. The main guarantee was the exhaustive list of narrow and detailed grounds (approx. 30) for the termination of an employment contract, subject to different procedures for each situation. The Labour Code abolishes this regulation establishing only more general grounds and fixing additional guarantees to the certain groups of employees.

Apart from general grounds of the private law contract expiration, the employment contract may be terminated:

- Upon the initiative of the employer;
- Upon the request of the employee;
- Upon mutual agreement of both parties;
- Upon expiration of the term of the contract.

Other laws can provide for additional grounds of termination of the contract.

Termination at the initiative of the employee

An employee may terminate a non-term contract of employment as well as a fixed-term employment contract prior to its expiry by giving the employer written notice thereof at least 14 days in advance. In this case the employer must execute the termination of the employment contract and settle accounts with the employee. Furthermore, guarantee against abuses is an entitlement to the employee to withdraw his or her request to terminate the employment contract not later than within 3 days of the submission of the request.

In some cases an employee may terminate a non-term contract of employment by giving the employer notice thereof at least 3 days in advance. This is the case if the request to terminate the employment contract is justified by the employee's illness or disability or where the employer fails to fulfil the obligations under the employment contract, laws or the collective agreement or there is long-lasting idle time at the employee's workstation. The same rule applies for the employee who is already entitled to the full old age pension or is in receipt thereof.

Termination at the initiative of the employer

Grounds for termination

The contract of employment may be terminated on the initiative of the employer *without any fault* on the part of an employee with prior notice (Art.129 of the Labour Code) or on the initiative of the employer *with fault* on the part of an employee without prior notice (Art.136 (3) of the Labour Code). The ground for terminating a contract of employment without giving an employee prior notice thereof is the fact that the employee performs his or her work duties negligently, or commits other violations of labour discipline, provided that disciplinary sanctions were imposed on him or her at least once during the last 12 months, or the employee commits one gross breach of work duties.

Otherwise, an employer may terminate the non-term contract of employment with an employee only for valid reasons by giving him or her notice thereof. Only the

circumstances related to the qualification, professional skills or conduct of an employee should be recognised as valid. An employment contract may also be terminated on economic or technological grounds or due to the restructuring of the workplace as well as for other similar valid reasons. The dismissal of an employee from work without any fault on the part of the employee concerned shall be allowed if the employee cannot, with his or her consent, be transferred to another work.

Notice

An employer shall be entitled to terminate an employment contract by giving the employee written notice 2 months in advance. Employees who will be entitled to the full old age pension in not more than 5 years, persons under 18 years of age, disabled persons and employees raising children under 14 years must be given the notice of dismissal from work at least 4 months in advance. During the period of notice the employer must grant the employee some time off from work to look for a new job. The employee shall retain his or her average wage for this time.

Severance payment

Upon termination of a contract of employment at the initiative of the employer *without any fault* on the part of an employee with prior notice, the dismissed employee shall be paid a severance pay in the amount of his or her average monthly wage taking into account the continuous length of service of the employee concerned at that workplace: from 1 month average wage if the duration of employment is less than 12 months until 6 months average wage if the duration of employment is over 240 months (Art. 140 Labour Code).

In case the termination of the contract on the initiative of the employer with fault on the part of an employee, the latter is not entitled to any severance payment but he or she shall be paid for factually performed work as well as for unused annual holiday.

5.2.4 Remedies in case of unjustified dismissal.

An employee who disagrees with the dismissal from work is entitled to apply to the court within 1 month from the day of receipt of the appropriate document. If an employee is dismissed without a valid reason or in violation of the procedure established by law, the court shall reinstate him or her in the previous job and award him or her the average wage for the entire period of involuntary idle time from the day of dismissal from work until the day of execution of the court decision.

If the court is of the opinion that the employee may not be reinstated in his or her previous job due to economic, technological, organisational or similar reasons or because the employer may provide him or her with conditions that are not favourable for work, the court may recognise the termination of the contract of employment as unlawful. If this is the case the employee shall be awarded the average wage for the entire period of involuntary idle time from the day of dismissal from work until the effective date of the court decision. Additionally he or she is entitled to severance payment in the amount of his or her average monthly wage taking into account the continuous length of service of the employee concerned at that workplace: from 1 monthly average wage if the duration of employment is less than 12 months to 6

monthly average monthly wage if duration of employment is over 240 months. In this case the employment contract shall be considered terminated from the effective date of the court decision.

Working time

Legal working time

According to Arts.144 (1) – 144 (3) of the Labour Code working time may not exceed 40 hours per week and the duration of daily working time must not exceed 8 working hours. Maximum working time, including overtime, must not exceed 48 hours per 7 working days. For employees employed in more than one workplace or having an additional job contract in the same workplace the daily working time (including breaks to rest and to eat) may not exceed 12 hours.

However, the duration of working time of the specific categories of employees (of health care, care (custody), child care institutions, energy, specialised communications services and specialised accident containment services as well as other services that operate in uninterrupted regime - the list approved by the Government) as well as of persons on duty in premises may be up to 24 hours per day. The working time of such employees must not exceed 48 hours per seven-day period and the rest period between working days must not be shorter than 24 hours.

Some categories of employees (persons under 18 years of age, persons who work in the dangerous or harmful working environment where the concentrations of hazardous factors exceed the permissible marginal amounts) are entitled to have shorter working time. It shall be noted that normally these employees are entitled to full remuneration despite less working hours.

The five-day working week with two rest days is the standard established under the law. The six-day working week with one rest day shall be set for employees in enterprises where a five-day working week is impossible due to the type of production and other conditions. It is prohibited to assign one employee to work two shifts in succession.

Overtime and overtime rates

Generally overtime work is prohibited. An employer may apply overtime work only in exceptional cases, e.g. the work to be performed is necessary for national defence and for preventing accidents or danger, when work is necessary for the public, for elimination of unforeseen or accidental circumstances due to an accident, natural disasters, etc., when it is necessary to finish the work that could not have been finished during the working time because of an unforeseen or accidental obstacle, if interruption of work may result in the deterioration of production materials or breakdown of working equipment etc. Work of administration officials exceeding the set working time duration shall not be deemed to be overtime work. The list of such positions shall be laid down in collective agreements, internal regulations.

Overtime work shall not exceed 4 hours for each employee during two consequent days and 120 hours per year.

Overtime work can not be assigned: to persons under 18 years of age; to persons who are studying in secondary and vocational schools without interrupting work - on study days; when factors in the working environment exceed the permitted levels. Disabled people may be assigned to overtime work provided that this is not forbidden by the conclusions of the commission that establishes disability. Overtime work can be assigned only with their consent: to pregnant women, women who have recently given birth, women who breastfeed, employees who are raising a child under 3 years of age, are alone raising a child under 14 years of age or a disabled child under 16 years of age, as well as disabled persons.

The remuneration for overtime shall be at least one and a half of the hourly pay (monthly wages) established for the employee.

Paid leave

The holidays with pay are classified into minimum, extended and additional.

The *minimum* annual holidays with pay is a period of 28 calendar days. For some categories of workers the annual holidays with pay is 35 calendar days, namely: employees under 18 years of age, employees who, as single parents, are raising a child under 14 or a disabled child under 16, disabled persons and other persons provided for by law.

Extended annual holidays with pay up to 58 calendar days shall be granted to certain categories of employees whose work involves greater nervous, emotional and mental strain and professional risk as well as to those employees who work under specific working conditions. The Government approved the list of categories of employees who are entitled to extended leave. The list includes professions such as teachers, university professors, some categories of medical servants, fishermen, aviators and other related professions.

Additional annual holidays with pay are granted to employees for working conditions which are not in conformity with normal working conditions (i.e. harmful or hazardous conditions), for a long uninterrupted employment at the same work place or for a special character of work (i.e. work performed outdoor, on the road). The

Government sets the duration of additional annual leave, the terms and conditions as well as the questions of procedure for granting leave. Annual holidays with pay for the first working year shall be granted, as a rule, after 6 months of uninterrupted work at the enterprise. For the second and the subsequent working years annual leave shall be granted at any time of the working year in accordance with the schedule of granting annual leave. Annual holidays shall not be shortened for part-time employees. Annual leave may, at the request of the employee, be taken in parts, but one part of annual leave may not be shorter than 14 calendar days. Recall from annual holiday shall be permitted only on the employee's consent. It is important to emphasise that minimum holiday may not be replaced by compensation in cash. If the employee cannot be granted annual leave due to the termination of employment relationship or where the employee does not wish to go on leave, he or she shall be paid compensation in cash. Compensation in cash for the unused annual leave shall be paid when the employment contract is terminated irrespective of its term.

Public Holidays

The Labour Code enumerates 11 public holidays (in total 13 calendar days) when there shall be no work at enterprises, offices and organisations.

Act No. IX-1656 of 26 June 2003, which entered into force on 16 July 2003, amended Article 162 of the Labour Code and added 24 June in the holidays list.

The exceptions to this rule are allowed only for work which cannot be interrupted on technical grounds (enterprises and organisations working in uninterrupted regime), work involving the need to provide services to the population as well as work involving urgent repair and loading.

Maternity leave and maternity protection

Maternity protection

Pregnant women, women who have recently given birth or breast-feeding women may not be assigned to perform work in the conditions that may be hazardous and affect the health of the woman or the child. The employer must establish the nature and duration of potential risk which may affect the safety and health of the woman.

Upon assessment the employer must take necessary measures to ensure that the above risk is eliminated. If after change of the working conditions it is not possible to avoid the woman's exposure to risks the employer must transfer the employee (with her consent) to another job at the enterprise, institution or organisation. In such case the employee shall not be paid less than the average wage she received before being transferred to another job. If transferring a pregnant woman to another job where her and her expected child's exposure to risks could be avoided is not technically feasible, the pregnant woman shall, with her consent, be granted a leave until she goes on her maternity leave and shall be paid during the period of extra leave her average monthly wage. If it is not technically feasible to transfer a woman who has recently given birth or a breast-feeding woman after her maternity leave to another job where her or her child's exposure to risks could be avoided the woman shall, upon her consent, be granted an unpaid parental leave until her child is 12 months of age and shall be paid maternity social insurance benefits prescribed by the Law on Social Insurance of Sickness and Maternity during that period.

The pregnant women, women who have recently given birth or breast-feeding women may be assigned to work at night upon their consent only. If she refuses to work at night and submits a certificate that such work would affect her safety and health, the employee shall be transferred to daytime shift. Where it is not possible to transfer to day-time shift due to objective reasons, she shall be granted a leave until she goes on maternity leave or child-care leave until the child is 12 months of age. During the period of leave granted before the employee goes on maternity leave she shall be paid her average monthly wage.

Guarantees to pregnant women: an employment contract may not be terminated with a pregnant woman from the day when her employer receives a medical certificate confirming pregnancy and for a month after maternity leave.

Guarantee to an employee raising a child under 3 years of age: employment contracts with employees raising a child (children) under 3 years of age may not be terminated without any fault on the part of the employee concerned.

Guarantee to single parents raising a child under 14 years of age:

Prior right to choose a shift wherever possible (Art.147 (5) of the Labour Code);

Right to the minimum annual holiday of 35 calendar days (Art.166 (2) of the Labour Code).

Other Guarantees to pregnant women, women after the confinement and breast-feeding mothers, employees raising a child until he or she has reached the age of 3 as well as to employees who are raising as single parents a child until he or she has reached the age of 14 or a child with disabilities until he or she has reached the age of 16:

Assignment for overtime work upon their consent only (Art.150 (4) of the Labour Code);

Assignment for a business trip upon their consent only (Art.220 (3) of the Labour Code);

Assignment for stand-by duty at the enterprise or at home upon their consent only (Art.155 (4) of the Labour Code);

Assignment to work during annual holidays upon their consent only (Art.162 (2) of the Labour Code);

Right to demand to set the part-time work (Art.146 (1) of the Labour Code);

Right to choose the time of annual holiday after 6 months of uninterrupted work (Art.169 (4) of the Labour Code).

The employees *raising a child with disabilities up to 16 or 2 children under 12* shall be granted an additional day of rest per month (or their weekly working time shall be shortened by 2 hours). The employees who are raising 3 or more children under 12 shall be entitled to 2 additional days of rest per month (or their weekly working time shall be shortened by four hours) and shall be paid the average wage.

Maternity leave

The right to maternity leave is guaranteed by Art.179 of the Labour Code. Women shall be entitled to maternity leave of 70 calendar days before childbirth and 56 calendar days after childbirth (in case of complicated confinement or birth of two or more children – 70 calendar days). This leave shall be added up and granted to the woman as a single period regardless of the days used prior to confinement. The employees who have adopted newly born babies or who have been appointed as their guardians shall be granted leave for the period from the day of adoption or establishment of guardianship before the baby is 70 days old.

For the period of maternity leave the State Social Insurance Fund shall pay the allowance provided for in the Law on Social Insurance of Sickness and Maternity.

Daily breaks for breastfeeding

In addition to the general break to rest and to eat, a breast-feeding woman shall be given at least 30-minutes breaks to breast-feed at least every 3 hours. At the mother's request the breaks for breast-feeding may be joined or added to the break to rest and

eat or given at the end of the working day shortening the working day accordingly. Payment for these breaks to breast-feed shall be calculated according to the average wage of the employee. If a pregnant woman, a woman who has recently given birth or a breast-feeding woman has to attend medical examinations, she must be released from work for such examinations without loss in her average wage, if such examinations have to take place during working hours.

Parental leave

Parental leave until the child has reached the age of 3 shall be granted, at the choice of the family, to the mother (adoptive mother), the father (adoptive father), the grandmother, the grandfather or any other relatives who are actually raising the child as well as to the employee who has been recognised the guardian of the child. The employees entitled to this leave may take it in turn as well as distribute the period in parts. During the period of this leave the employee shall retain his or her work position with the exception of cases when the enterprise is dissolved. Parental leave is paid directly by the State Social Insurance Fund.

Other leave entitlements

Sick leave

Employees who have lost their functional capacity as a result of injury at work or occupational disease shall retain their work position until they recover their functional capacity, or disability is established.

Employees who become temporarily incapable to work for other reasons shall retain their work position if they are absent from work due to temporary incapacity to work for not more than 120 successive days or for not more than 140 days within the last 12 months excluding the period during which an employee received a state social insurance benefit for attending a family member or an allowance in cases of epidemic diseases. If an employee is not able to work longer, his or her employment contract is subject to termination with notice without any fault on the part of employee.

Educational leave

Pursuant to Art.181 of the Labour Code employees shall be entitled to educational leave in order to prepare for and to pass the entrance examinations to colleges and higher educational institutions - three days for each examination. The employees who are already studying at schools of general education or at colleges and higher educational institutions are entitled to educational leave subject to the certificate of the above institutions. Travel time shall not be included in the period of educational leave. The employees who are studying, taking entrance examinations to colleges and higher educational institutions under study contracts with their enterprise shall be entitled to a paid educational leave with pay at the rate of at least the average wage. Pay for the period of study for employees who are taking examinations or are studying at their own initiative, shall be determined in the collective agreements or in the contract of employment. The monthly wage of employees who are studying at educational institutions may not be less than the minimum monthly wage established by the Government.

Sabbatical leave

Sabbatical leave shall be granted to complete a thesis, to write a textbook and in other cases provided by law. Duration, procedure of granting and payment for sabbatical leave is regulated by law, the contract of employment or a collective agreement.

Leave for trade union purposes

Employees elected to the body of a trade union functioning in an enterprise shall be granted a leave up to 6 working days per year to upgrade their qualifications, to attend various trade union events etc. The procedure of granting leave and remuneration shall be stipulated in the collective agreement.

Leave because of the holding of public office

Art.183 (1) of the Labour Code specifies the cases when employees are granted leave in order to exercise the election right; to fulfil the duties as a Member of Parliament; when summoned as a witness, a victim, an expert, an interpreter, a public prosecutor, a public defence counsel, a member of a public organisation or the representative of the collective of employees to inquiry or preliminary investigation bodies, the prosecutor's office and the court; to perform the tasks of State control, to perform the duty of an organ donor and in other cases provided by law.

Unpaid leave

Unpaid leave can be provided at the employee's request with the consent of the employer.

Minimum age and protection of young workers

Statutory minimum age

Normally a physical person shall acquire full legal capacity in labour relations and ability to acquire labour rights and undertake labour duties when he or she reaches the age of 16 years. Nevertheless, the recruitment of persons under the age of 16 is allowed with written consent of the school and of one of the child's parents or his or her statutory representative, as well as with permission of his or her attending paediatrician (Art.104 (3) of the Labour Code). Moreover the persons under the age of 16 shall be assigned to perform easy works that are not hazardous and do not affect their physical and psychological development. Upon employment of a person under the age of 16, employers are obliged to notify the Office of Labour Inspectorate on the fact of recruitment.

Work of minors (i.e. workers under 18 years old)

Employment of persons who are under 18 years of age shall be prohibited for:

Work that is beyond their physical and psychological capacity;

Work involving exposure to toxic, carcinogenic agents causing genetic mutation or which are harmful to health;

Work involving possible exposure to ionising radiation or other harmful and/or dangerous agents;

Work involving a higher risk of accidents or occupational diseases and work which a young person might not be able to perform safely due to lack of experience or attention to safety.

The procedure of recruitment of young persons, their health examination and assessment of their capacity to perform specific work, their working time, the list of works prohibited for them and that of dangerous, harmful factors has been approved by the Government.

Special measures of protection of young workers (e.g. night work, work in arduous, hazardous or unhealthy activities)

The Labour code provides special guarantees to the persons under 18 years of age:

Prohibition of a probation period to assess the suitability of an employee for the agreed work;

Prohibition of termination of the contract of employment on the initiative of an employer without any fault of an employee except extraordinary cases when the retention of an employee would substantially violate the interests of the employer;

Obligatory medical examination upon employment and annually thereafter until they reach 18 years of age;

Prohibition to conclude the contracts of full pecuniary liability of employee;

Minimal duration of daily uninterrupted rest to employees under 16 years of age - at least 14 hours, and to persons from 16 to 18 years of age - at least 12 hours covering both within the time from 10 p.m. to 6 a.m.;

Limited maximal duration of working time;

Working time harmonisation with time of attendance to school;

Right to minimum annual holiday of 35 calendar days;

Assignment for overtime work, for a business trip, for stand-by duty at the enterprise or at home, to work during annual holidays upon their consent only;

Right to demand to set the part-time work;

Right to choose the time of annual holiday after 6 months of uninterrupted work.

Equality

Prohibition to discriminate on the ground of sex, race, nationality, religion, political opinion, trade union activity or age

Art.29 (1) of the Constitution declares the equality of all people before the law, the court, and other State institutions and officers. Art.29 (2) states that a person may not have his or her rights restricted in any way or be granted any privileges on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions or opinions. Following this constitutional provision the Labour Code lays down the principle of equality of all individuals. The Labour Code broadens the list of grounds of prohibited discrimination establishing the equality irrespective of the gender, sexual orientation, race, nationality, language, origin, citizenship and social status, religion, marital and family status, age, convictions or opinions, membership in political party or public organisation as well as factors unrelated to the employee's professional qualities. However, equality is postulated not as a legal norm of direct application but as the principle of regulation of labour relations. According to Art.9 (4) of the Labour Code this principle shall be applied only when settling arising disputes if the relations are not regulated by labour laws and regulatory acts, and

when the provisions of other branches of law that regulate similar relations are not applicable to them. The Labour Code itself does not contain many norms of direct application, i.e. Art.99 (1) of the Labour Code prohibits an employer to refuse to employ on the discriminatory grounds specified above.

Prohibition of gender discrimination

According to Art.186 (3) of the Labour Code, men and women shall get equal pay for equal or equivalent work. Art.188 (3) of the Labour Code states that when applying the work classification system for determining the wages, the same criteria shall be equally applied to both men and women and the system must be worked out in such a way as to avoid any discrimination on the grounds of sex. If an employee loses a certain payment related to labour relations due to experienced discrimination, he or she has the right to appeal to the institution examining labour dispute and to demand to abolish or to change the discriminating legal norm or the agreement provision, to obligate to do a duty in kind, to recover experienced material damage. Besides, in such case non-material damage can be recovered as well, the court determines the amount of it.

The issues of equal treatment of men and women are partially regulated by the Law on [Equal Opportunities](#) of 1 December 1998. The Law gives the notions of direct and indirect discrimination, defines the breach of the principle of equal treatment. The Administrative Code provides sanctions for the breach of the principle of equal treatment.

However, the Labour Code itself contains quite a big number of guarantees for elderly people. The guarantees are made dependant upon the number of years left until the moment of acquiring the right to full pension according to the state social security system. The Law on the Pensions of State Social Security sets different age for men and women for acquiring the right, that is why some guarantees in the Labour Code are of discriminatory nature.

Prohibition of discrimination on the ground of age

This question is one of the most difficult problems in the Lithuanian Labour Law. It should be born in mind that traditionally Lithuanian laws provide many of guarantees to groups of employees of different age: minors, pensioners, employees who will be entitled to the full old age pension in not more than five years, etc. They are justified by the need of greater protection or by the nature of work which shall be considered independently.

Prohibition of discrimination on the ground of the trade union membership

Despite the fact that there are not many legal norms of direct application prohibiting discrimination on the ground of trade union membership, such discrimination is precluded indirectly. The court practise shows that each action of employers infringing normal relationship between the parties (i.e. refusal to employ, suspension from work, imposing disciplinary measures, pecuniary liability, unilateral change of working conditions, dismissal from work) shall be justified by valid reasons. The employer carries the burden of proof of the validity of reasons.

Sexual harassment

Is sexual harassment defined by the national law or case law? How is this issue dealt with by the national laws or regulations?

Art.1 (3) of the Law on Equal Opportunities of Women and Men of 1 December 1998 defines sexual harassment as based on the sex abusive behaviour with a person in labour service relationship or in other relationship of subordinate nature. The actions of sexual harassment of colleagues, subordinates or customers constitute so-called gross breach of work duties and dismissal from work as a disciplinary sanction for employee may be imposed. The actions of the employer can impose the administrative sanction - penalty up to 2000 Lithuanian Litas (EUR 580) (Art.41-6 of the Code of Administrative Offences of 1984).

Pay issues

Minimum wage

The Government sets the minimum wage periodically. The Government upon the recommendation of the Tripartite Council determines the minimum hourly pay and the minimum monthly wage. Upon the recommendation of the Tripartite Council the Government may establish different minimum rates of the hourly pay and the minimum monthly wage for the different sectors of economy, regions or categories of employees. From September 2003 the minimum monthly wage has been established in amount of 450 Lithuanian Litas (EUR 130) and the minimum hourly rate has been Lithuanian Litas 2,53 (EUR 0,73).

Determination of pay

Art.188 (1) of the Labour Code stipulates that the conditions for determining the wages, rates, tariffs and qualification requirements for professions and positions, work quotas, the procedure of setting tariffs for work and the employees shall be laid down in the collective agreements. Furthermore, specific pay on the hourly rate basis, monthly wages, other forms and conditions of remuneration for work, work requirements (output, time, service and other requirements) shall be laid down both in the collective agreements and the employment contracts. However, in practise the wages are usually not fixed in the collective agreements but in the employment contracts. Rather big enterprises having long traditions of collective bargaining or enterprises with dominating foreign investments are inclined to set wages and the conditions of remunerations in collective agreements. But this is not the case in small and medium enterprises where the concrete wages are laid down in the employment contracts or the real wages are not revealed in order to avoid taxes.

Wages in the public sector are regulated by Government decree. Normally it establishes the range (minimal and maximal wage or rate) for particular work performances and the head of administration has full discretion to concretise the exact remuneration for work in the contract of employment.

Nonetheless, the Labour Code lays down obligatory rules for determination of wages in case of work performed in extraordinary working conditions:

Overtime and night work shall be remunerated at least at the rate of one and a half of the established hourly pay (Art.193 (1) of the Labour Code);

Work on a rest day or a holiday that has not been provided for in the work schedule shall be paid at least at the double rate, if it was not compensated by granting the employee with another rest day during the month or by adding that day to his or her annual leave (Art.194 (1) of the Labour Code);

Work on a holiday that has been provided for in the work schedule shall be paid at least at double rate (Art.194 (2) of the Labour Code).

According to Art.201 (1) of the Labour Code wages must be paid to employees at least twice a month. However, Section 2 of this Article stipulates that wages may be paid once per month if the employee presents the respective application in written form asking to pay wages in such a way.

Protection of wages

In case the wages or any other payments relating to employment relations are paid late because of the employer's fault, except when bankruptcy proceedings are instituted towards the enterprise or when the bankruptcy procedure is used out of court, the employee shall also be paid default payments due to him or her under law. However, the special Law on Establishing Default Payments in Labour Relations of 20 February 1996 foresees a very small rate of default payments – 0,06 per cent for one day of delay.

In the case of the employer's insolvency, the claims of the employee relating to employment relations shall be met according to the procedure and conditions laid down in the Law on Guarantee Fund of 12 September 2000. In the case of the employer's insolvency the Guarantee Fund satisfies the claims of employees concerning all kinds of remuneration for work and other financial claims related to the employment contract. The maximum amount of claims to be satisfied is set by the Government. Normally, the employees are entitled to remuneration not exceeding 3 monthly minimum wages, minimal severance payment, and compensation for one unused annual minimum holiday.

Trade Union Regulation

Trade union structure

During the soviet period the system “one enterprise – one trade union” was introduced. At that point, the system covered 90 percent of the enterprises and over 95 percent of the labour force were members of factually one official trade union. After the restoration of independence in 1990 trade unions became independent. The freedom to organise and the right to function independently was guaranteed by the [Law on Trade Unions](#) of 21 November 1991.

But today trade unions unite very small part of employees and the majority of employees do not belong to them. After the restoration of independence the old soviet trade unions were destroyed and almost all valuable assets of the soviet trade unions were nationalised. However, the creation and strengthening of new independent trade unions were not stimulated. There is no impartial data available, but according to different estimations the number of unionised employees varies from 5 to 15 per cent

of the entire labour force. The trade unions tend to declare more impressive numbers of their members.

Currently, 3 independent trade union associations represent employees at the national level: the Lithuanian Trade Union Confederation (declares approx. 130 000 members), the Lithuanian Trade Union "Solidarumas" (declares approx. 80 000 members) and the Lithuanian Labour Federation (declares approx. 15 000 Members). These organisations work in the same regions, sectors and even enterprises but they rather compete than work together.

Due to very weak trade union movement in Lithuania the employees lose the opportunity to bargain collectively in order to improve the minimum labour standards set by law, to go on strikes and to participate in decision-making processes of an enterprise. The Labour Code introduces an additional possibility for workers' representation through work councils but this system does not function yet.

According to Art.6 (1) of the [Law on Trade Unions](#), trade unions may be established on the basis of professional, office, production, territorial or other principles determined by the trade unions themselves. Several trade unions by their free choice and on their own initiative may unite in order to form a trade union association. Art.41 of the [Labour Code](#) provides that social partnership may be developed on the national, sectoral (production, services, professional), territorial (municipality, county) levels or at the levels of enterprises, institutions and their structural subdivisions. It means that trade unions may function at all possible levels – those of enterprise, territorial or sectoral but the law sets no uniform structure. The Law lays down the material preconditions for establishment of a trade union - in order to establish a trade union the latter must have at least 30 founding members or its founding members must account for not less than 1/5 of all employees but in no case a trade union may be established by less than 3 employees.

The important feature of the trade unions movement in Lithuania is the fact that there exists a strong tradition to set up a trade union in each enterprise. This is linked to the idea propagated by soviet labour law that each enterprise had to have its own organisational structure which directly participated in the relations with the employer of that very enterprise, concluded the enterprise agreement, expressed its opinion on various issues determined by the law representing not only its members but the whole collective of employees. The Law on Trade Unions actually did not reform the previous trade union system. This law orients trade unions activities towards a separate enterprise limiting the activities related to the territory of the enterprise and outside the enterprise while forming trade union federations and unifications. The prevalence of this pattern indicates the fact that all national trade union organisations (like the Lithuanian Trade Union Confederation, the Lithuanian Trade Union "Solidarumas") consist of territorial or sectoral trade unions that are simply associations uniting trade unions of enterprises. This trade union structure mainly determines the structure of collective bargaining – normally it is enterprise oriented collective bargaining.

Registration and recognition of unions

According to Art.8 of the Law on Trade Unions, in order to acquire the rights of a legal person, trade unions or their associations shall register their regulations (statute) at the municipality or the Ministry of Justice depending on the scope of their activity. During a long period of time, the Supreme Court of Lithuania regarded this provision as the requirement sine qua non for each trade union to function and to represent the interest of the members and other employees. However, the new Civil Code 2000 taking into scope the regulation of the establishment of legal persons changed the former approach. Pursuant to Art.2.38 of the Civil Code trade unions shall be considered as the legal persons from the moment of their establishment. The only duty they have is to inform the respective body of the municipality about their establishment.

Considering this new regulation the doctrine formulated by the Supreme Court is not in line with the Civil Code anymore.

When the trade union of an enterprise is established it has all rights to represent all employees of that enterprise and the employer has no right to refuse to recognise it.

Before the Civil Code of 2000 entered into force on 1 July 2001 the trade unions were obliged to register their regulations (statutes). Refusal to register a trade union or association of trade unions was subject to appeal against in court that should investigate the case within 10 days according to the special procedure. As far as the public authority is not entitled to register or recognise the trade union anymore - there is no remedy needed.

Unfair labour practices

There is no such concept in national Lithuanian law. The Labour Code prohibits to hinder the formation of trade unions by employees and to interfere with the lawful activities of the unions. Furthermore, the Law on Trade Unions prohibits an employer or his or her authorised representative from making employment or retention of a job a condition of the employee's consent to refrain from joining or to withdraw from a trade union. The employer or his or her authorised representative is prohibited to organise and finance organisations seeking to hinder, terminate or control the activities of trade unions. Trade unions may not be dissolved or suspended by an administrative order.

The Law stipulates that the rights and legitimate interests of trade unions and their members shall be defended in the manner established by the law, by the bodies of state power and governance, the court and other law enforcement bodies. The State bodies, officials, natural or legal persons who inflict damage on a trade union by their unlawful actions must therefore compensate the trade union according to the procedure established by the Code of Civilian Procedure.

Employers' Organisations

Lithuanian laws, which in great detail regulate trade unions activities, contain no special norms securing the legal status of the employers' organisations. The Employers' organisations may simply associate in accordance with the laws on NGO's (public organisations or associations for general purposes). Whereas employers' organisations under

the Lithuanian laws act as associations of a general competence, they naturally fail to obtain per se the rights to represent their members in collective bargaining and to sign the agreements that are binding to the employer - member of the association. Although employer's organisations act quite actively in the social sphere (for instance, they are the Members of the Tripartite Council), they are not adapted to sign collective agreements. The main problem is that their regulations do not stipulate any power of employers' representation in collective bargaining and concluding collective agreements. Due to weakness of the trade union movement and the strict regulation on strikes (see Chapter 15) trade unions are not able to exercise pressure on employers in order to conclude collective agreements.

Collective Bargaining and Agreements

Collective Bargaining regulation

Collective bargaining in order to conclude a collective agreement is traditionally treated as a form of social partnership. The legal framework of collective bargaining and conclusion of the collective agreements is established by the Labour Code.

Collective agreements may be concluded on the following levels:

- State (national) level;
- Sector (production, services, professional) level;
- Territorial (municipality, county) level;
- Enterprise (institution, organisation) level or on the level of its structural subdivision.

The Labour Code contains no strict rules on the subject matters of collective agreements. It just gives a non-exhaustive list of matters that may be regulated by collective agreements. For example, the following may be specified in a collective agreement concluded at the national, sectoral or territorial level:

- Terms and conditions of remuneration for work, working and rest time, safety and health of the employees;
- System of remuneration for work in case of price increases or growing inflation;
- Conditions of speciality acquisition, in-service training and retraining;
- Social partnership support measures that help to avoid collective disputes, strikes;
- Procedure for determining, changing and revising work quotas, working time, supply of services, number of employees;
- Other labour, social and economic conditions that are important to the parties;
- Procedure for amending and supplementing the collective agreement, period of validity, control of execution, liability for the violation of the agreement, etc.

The parties to a collective agreement of an enterprise shall lay down the following conditions in the agreement:

- Conditions for conclusion, amendment and termination of employment contracts;
- Conditions of remuneration for work (provisions regarding wage rates, basic wages, bonuses, additional pay, other privileges and compensatory allowances, systems and forms of remuneration for work and provision of incentives, setting work quotas, indexing and payment of wages and settlement procedure as well as other provisions);
- Working time and rest time;
- Provision of safe and healthy working conditions, granting compensatory allowances and privileges;

Acquisition of profession or speciality, in-service training, retraining, as well as related guarantees and privileges;
Procedure of implementation of the enterprise collective agreement;
Exchange of information and consultations between the parties;
Other working, economic and social conditions and provisions that are of consequence for the parties.

However, collective agreements may regulate the position of employees only *in favorem*. According to Art.4 (3) of the Labour Code, working conditions under which the position of employees is made less favourable than that established by the Labour Code, laws and other regulatory acts shall be invalid.

The parties to collective bargaining

Parties to a national, sectoral or territorial collective agreement shall be correspondingly the central (national) trade union organisations and the employers' organisations, the trade union and employers' organisations of the appropriate sector of industry (production, services, profession), trade union and employers' organisations acting on the specified territory (municipality, county).

Following the soviet labour law tradition and as distinct from the parties to a national, sectoral or territorial collective agreement the Labour Code states that a party to a collective agreement of an enterprise is the "collective of employees of the enterprise". The collective of employees is not a legal or physical person and cannot exercise the right to conclude an agreement independently on its own. This misleading regulation was not changed in the Labour Code arguing that the collective of employees is able to exercise this right through its representatives – trade unions. That is why Art.60 (1) of the Labour Code establishes that the collective shall be represented for the purposes of conclusion of the agreement by the trade union acting in the enterprise. The problems appear when several different enterprise-level trade unions act in the same enterprise. This situation can be solved in two ways: either all trade unions that have the right to negotiate the collective agreement agree to form a joint representation of trade unions, or, if the trade unions fail to reach an agreement on the formation of a joint representation the decision on the representation shall be adopted by the meeting (conference) of the employees. A trade union that gets a majority of votes of the employees participating in the meeting (conference) has the right to negotiate and to conclude an agreement on behalf of all employees of the enterprise.

If there is no acting trade union in the enterprise, the meeting of the collective of the employees may transfer the right to negotiate and to conclude the agreement on behalf of all employees of the enterprise to the sectoral trade union. If this is not the case, a work council elected by secret ballot at the general meeting of the collective of employees has the right to negotiate and to conclude the agreement.

Procedure of the Collective Bargaining

The Labour Code establishes the general principles of collective bargaining procedures but the legal norms regulating the different types of collective agreement contain some special provisions.

In line with the general principles of collective bargaining laid down in Art.48 of the Labour Code the party willing to bargain shall introduce itself to the other party. The presentation shall be effected in written form. It shall specify the reason for bargaining and contain the clearly formulated demands or proposals.

Secondly, the parties shall agree on the opening and procedure of bargaining. In case the parties fail to reach any agreement on the opening of bargaining the bargaining must be conducted within 2 weeks from the day the other party received the presentation for bargaining. Collective bargaining must be conducted in good faith and without delay. These two stipulations clearly indicate that bargaining is not deemed to be the right but rather the duty of an employer.

Furthermore the Labour Code entitles parties to the collective agreement and their representatives with the right to demand from the other party to submit information on all issues relating to bargaining. This information must be presented within 1 month from the day it was requested unless otherwise agreed by the parties.

The parties to the agreement shall determine other procedural questions like time limits for drawing up, signing, supplementing and amending a collective agreement as well as other related issues. But the law is more imperative and detailed describing the procedure of collective bargaining and the conclusion of the collective agreement of an enterprise. The main requirement is laid down in Art.62 (4) of the Labour Code according to which the draft collective agreement of the enterprise approved by the parties shall be submitted to the employees' meeting (conference). The trade union or other representative of the collective of employees and the employer shall sign the draft collective agreement of the enterprise only if the meeting (conference) of the employees approves the agreement. If the meeting (conference) does not approve the submitted draft it will decide either to resume the bargaining or to initiate a collective labour dispute.

Extending the binding effects of collective agreements

It is generally accepted that collective agreements are binding to the parties. The obligatory character of the agreements is apparent from the principles of the Lithuanian labour Law, which are laid down in the Code:

Liability of the parties to the collective agreement for their obligations (Art.2 (1) of the Labour Code);

Actual fulfilment of the obligations of social partners (Art.40 (2) of the Labour Code).

Under the former Soviet regime, the collective agreement was usually applied to all employees of the enterprise irrespectively of their membership in the trade union. The Labour Code follows this same pattern (Art.59 of the Labour Code) and extends the application of this principle to the national, sectoral and territorial agreements as well. Pursuant to Art.52 (1) of the Labour Code a national, sectoral and territorial collective agreement shall be applied in the enterprises where employers were members of the associations of employers which signed the agreement, or joined the employers' associations after the signing of the agreement.

For the first time in the Lithuanian labour law history the Labour Code introduced the basic provisions on extension of the sectoral, territorial collective agreement erga omnes. According to Art.52 (2) of the Labour Code the Minister of social security and labour may extend the scope of application of the sectoral and territorial collective agreement or separate provisions thereof by administrative law enactment establishing that the agreement shall be applied with respect to the entire sector, profession, sphere of services or a certain territory. This may happen if one or several employees' or employers' organisations that are parties to the sectoral or territorial collective agreement submit an appropriate request, and the Minister is of the opinion that the provisions of a sectoral or territorial agreement have consequences on a sector of production or profession.

The Labour Code expressly describes the solution of collisions between several different collective agreements concluded at the national, sectoral, territorial levels.

However, this same rule shall be applied to the possible collisions between the national, sectoral, territorial agreements and the enterprise agreements as well collisions between several collective agreements of an enterprise.

The general rule can be formulated as follows: when several collective agreements are applicable in an enterprise the provisions of the agreement that provide for more favourable conditions for the employees shall apply.

Time of effect of collective agreements

A national, sectoral and territorial agreement shall be subject to registration upon application at the Ministry of Social Security and Labour. This type of agreement enters into force from the day of its registration and is valid until the day specified therein or until the conclusion of a new national, sectoral or territorial collective agreement.

A collective agreement of an enterprise enters into force upon its signing, unless otherwise established in the agreement. This type of collective agreement is valid until the signing of a new collective agreement of the enterprise or until the deadline set in the agreement. When a fixed-term collective agreement of the enterprise has been concluded the parties shall start negotiations for its renewal 2 months before the termination of its validity.

If an enterprise files a petition for bankruptcy or initiates performance of extra judicial bankruptcy procedure, the validity of the collective agreement of the enterprise is suspended.

A national, sectoral and territorial agreement may be terminated in the cases described by the Labour Code and in accordance with the procedure established therein. A problem may arise if there is such stipulation laid down in the agreement. However, there is no jurisprudence on this matter.

The *collective agreement of an enterprise* may be terminated in the cases and according to the procedure specified in the agreement by any party after giving at least a three-month advance notice to the other party. Termination of a collective

agreement of an enterprise before the lapse of a six months period after the coming into force of the agreement shall be prohibited.

Workers' representation in the enterprise

Organisation of workers' representation

As in many post-soviet countries, employees' representation through trade unions is one of the distinguishing features of the national labour law. Traditionally, the representatives of the employees of an enterprise locally organise trade unions of that particular enterprise. During the soviet era there was only one trade union organisation functioning in an enterprise, which was entitled to conduct collective bargaining and participate in governing the enterprise. After 1990 the main principle of this type of representation was sustained. The sole representative of employees of an enterprise was the enterprise level trade unions, which were granted the exclusive rights to bargain collectively, to conclude collective agreements, to call a strike.

According to the Labour Code, the trade union of an enterprise shall represent and protect interests of all employees of that particular enterprise. In case there is no functioning trade union in the enterprise, the collective of employees may transfer the function of employees' representation and protection to the trade union of the appropriate sector of economic activity. Lastly, if there is no functioning trade union in an enterprise and the function of representation was not transferred to the sectoral trade union, employees shall be represented by the work council.

The status of work councils and the procedure of their formation shall be established by law. The Labour Code stipulates that a works council shall be elected by secret ballot at the general meeting of the collective of employees (Art.19 (1) of the Labour Code) and that the work council may not perform functions recognised under the laws as the prerogative of trade unions (Art.21 (3) of the Labour Code).

Rights and obligation of workers' representatives

When exercising the competence of representation, the trade union of an enterprise, sectoral trade union or work council are called the representatives of employees in the Labour Code. Pursuant to Article 22 of the Labour Code the representatives of the employees shall have the following main rights of collective representation:

- To conclude collective agreements, supervise the implementation thereof;
- To submit proposals to the employer on the organisation of work at the enterprise;
- To organise and manage strikes and other lawful measures which the employees have the right to undertake;
- To submit proposals to the state and municipal institutions;
- To exercise non-state supervision and control of compliance with the labour laws;
- To protect the rights of the employees when concluding and implementing the contracts of purchase-sale of an enterprise, assignment of business or a part thereof, concentration of market structures or reorganisation of enterprises;
- To receive information from the employers about their socio-economic situation and envisaged changes that might affect the employees' situation;

To appeal to the court against the decisions and actions of the employer and persons authorised by him or her if the said decisions and actions are contrary to the legal provisions and agreements or violate the rights of the represented person.

The Labour Code does not enumerate the main obligations of workers' representatives. However, the principles of labour law may play the role here: while exercising their rights and fulfilling their obligations, employers, employees and their representatives are bound to comply with the laws, observe the rules of communal life and adhere to the principles of reasonableness, justice and honesty.

European Work Councils

The Labour Code itself does not provide the employees of EU enterprises or groups of enterprises with the right to receive information and consultations through the European Work Councils.

Collective labour disputes

Collective labour disputes are regulated by Chapter X of the [Labour Code](#).

Article 68 of the Labour Code defines a collective labour dispute as “disagreements between the trade union of an enterprise and the employer or the subjects entitled to conclude collective agreements, arising about the establishment or changing of work, social and economic conditions when conducting the negotiations or when concluding and implementing the collective agreement (conflict of interests), in case of failure to meet the demands made and submitted by the parties according to the procedure established by this Code.

Conciliation procedures

The hearing of a dispute in the Conciliation Commission is a mandatory stage within a collective dispute resolution. It is described in articles 72 to 74 of the Code. The Conciliation Commission shall be formed of an equal number of authorised representatives of the parties to the collective bargaining. The Conciliation Commission shall hear the collective dispute within 7 days from the day of the formation of the Conciliation Commission. The employer must provide the Conciliation Commission with the necessary working conditions: assign premises and provide the necessary information. The decisions of the Conciliation Commission shall be adopted by agreement between the parties, executed by drawing up a record and must be implemented by the parties within the time limit and according to the procedure specified in the decision. If the Conciliation Commission fails to reach an agreement on all or a part of the demands, the Commission may refer them for hearing to the Labour Arbitration, Third Party Court or wind up the conciliation proceeding by drawing up a Protocol of Disagreement. The decision of the Conciliation Commission shall be announced to the employees.

The possibility to enlist the services of the mediation officer as chairman of the Conciliation Commission is a new concept mentioned for the first time in the new Labour Code.

Arbitration

If the parties to a collective bargaining do not succeed to solve their dispute in the conciliation commission, they may agree to apply to the Labour Arbitration or to the so-called Third Party Court that shall resolve the collective dispute within 14 days.

The Labour Arbitration shall be formed *ad hoc* under the court district which has jurisdiction over the entity (employer's organisation or trade union) which made the demands in the collective dispute.

It consists of 6 appointed impartial arbitrators and one judge of the district court. The Third Party Court is formed *ad hoc* upon the written agreement of arbitrators appointed by each party. The Labour Arbitration and the Third Party Court take decisions by majority vote of the arbitrators. It shall be underlined that the resolution of collective labour disputes before the Labour Arbitration and the Third Party Court is an alternative and optional stage of disputes.

Despite the fact that the law establishes the binding character of the decision upon the parties, the decisions cannot lay down rights or obligations of individuals and are not enforceable by the courts. If employers or their organisations do not implement the decision of the Labour Arbitration or the Third Party Court, the only sanction left is the "green light" to start the industrial action.

Strikes and lockouts

Notice

The employer must be given an at least 7 days' written notice of the beginning of the intended strike including a warning strike lasting not longer than 2 hours, before the strike. When the decision is taken to hold a strike in essential services (see below) the employer must be given the written notice of the strike at least 14 days in advance. The notice shall specify demands with respect to which the strike is declared, the date of the beginning of the strike and the body leading the strike.

Strike regulation

According to Art.51 (2) of the Constitution the law shall establish the restrictions of the right to strike, the conditions and procedures for the implementation of this right. That is why strikes in Lithuania are regulated by law and not case law. Parties of collective agreements are reluctant to introduce rules on industrial actions into collective agreements.

The Lithuanian labour law system is distinguished by a relatively restricted possibility to take industrial action. The previous Law on the Regulation of Collective Disputes as well as the Labour Code provide for a rather detailed, long and complicated compulsory pre-strike procedure in an enterprise. The Law requires the organisers of the strike to have the support of the majority of employees of the enterprise, which is difficult to achieve in practice. That is why, since the first national regulations on strikes of 1992 were adopted, there has been very few lawful strike actions taken in Lithuania.

One of the obstacles for strike actions at a level higher than the enterprise seems to be the lack of special rules concerning strikes at sectoral, territorial or national level. Such strikes are legally interconnected with strikes in enterprises. It means that from the formal point of view the sectoral trade union willing to declare a strike in any branch must arrange separate strike actions in every enterprise of the branch concerned. This requires the support of the majority of all employees working in all enterprises where the strike is to be announced.

The next feature of the Lithuanian system is the nature of the demands of trade unions. The majority of strikes in Lithuania have related to purely legal conflicts (mostly, demands to pay wages according the employment contracts or collective agreements or pay them in time) when quite few of them have concerned collective bargaining issues (such as the rise of wages, extension of paid annual holiday etc.).

Under Lithuanian law it shall be distinguished between the right to submit the demands and the right to call a strike.

The person who is entitled to conclude collective agreements - the trade union of the enterprise or the joint representation of trade unions, sectoral, territorial trade union or trade unions organisations may submit the demands to an employer or an employers' organisation. In principle all trade union organisations are entitled to call a strike. As it was noted under certain circumstances the work councils are entitled to conclude collective bargaining agreements as well. However, according to the Labour Code the work councils may submit demands to the employer but they are not entitled to call a strike. This illogical regulation aims to distinguish the competences of the trade unions and work councils in an enterprise and to grant, as it is argued, the trade unions with some exclusive rights.

Pre-requisites for strike action

According to Art.81 (2) of the Labour Code the court shall declare a strike unlawful if the objectives of the strike contravene the Constitution, other laws or if the strike was declared in breach of the procedure and requirements laid down in the Labour Code. When the objectives of the strike are considered to be unlawful remain quite obscure. The Law pays more attention to the procedural questions of a strike action establishing several restrictions of general character.

Procedure of strike action

First of all, the entity who is entitled to conclude a collective agreement shall submit demands to an employer or employers' organisation (see above). The employer or employers' organisation shall communicate the decision in written form to the trade union or work council within 7 days from the receipt of demands. If the employer or employers' organisation refuses to fulfil the demands of trade unions, the parties to collective bargaining have to start either conciliation procedures or mediation procedures.

When a strike is declared then only the demands that were not met during the conciliation procedure may be put forward. The right to take the decision to declare a strike (including a warning strike) shall be vested in the trade union according to the

procedure laid down in its regulations. Pursuant to Article 77 of the Labour Code, a strike shall be declared if the corresponding decision is approved by secret ballot:

To declare a strike in an enterprise – by 2/3 of the enterprise employees voting in favour;

To declare a strike in the structural subdivision of an enterprise – by 2/3 of the employees of a structural subdivision of the enterprise and at least a half of the employees of the whole enterprise who vote in favour of a strike.

The Labour Code prohibits declaring a strike during the term of validity of the collective agreement if the agreement is complied with. The problematic issue here is that the legislator does not concretise what collective agreement shall be taken into consideration in this regard: that of an enterprise, sectoral or territorial? Shall this be the collective agreement between all the parties participating in collective labour dispute involved?

Strikes in essential services

Strikes are prohibited in the systems of internal affairs, national defence and state security, as well as in electricity, district heating and gas supply enterprises and first medical aid services. The demands of employees of the mentioned systems and enterprises shall be settled by the Government taking into account the opinion of the Tripartite Council.

Strikes shall be prohibited in natural disaster areas as well as in an area where the state of martial law or state of emergency has been declared in accordance with the procedure established by the law, until the liquidation of the consequences of natural disaster or lifting of the state of martial law or state of emergency. In principle, the Law allows to call a strike in essential services but imposes some restrictions or additional requirements like the notice period (the employer must be given a written notice of the strike at least 14 days in advance when other employers shall be informed prior at least 7 days). Furthermore, the law requires the minimum services to be maintained during the strike.

Art.77 (4) of the Labour Code indirectly defines essential services. According to this article, the services of railway and public transport enterprises, civil aviation, communications and energy enterprises, health care or pharmaceutical institutions, food, water, sewage and waste disposal enterprises, oil refineries, and, in general, enterprises with the continuous production cycle and other enterprises where the suspension of work would result in grave and dangerous consequences for the society or human life and health shall be regarded as essential services.

According to Art.80 (2) of the Labour Code, during strikes in enterprises of essential services as they are described above, minimum conditions (services) necessary for meeting the immediate (vital) needs of the society must be ensured.

Fulfilment of the above conditions shall be ensured by the trade union leading the strike, the employer and the employees appointed by them. In case of failure to ensure minimum services, the Government or the executive institution of the municipality may enlist for the purpose the aid of other services.

Obligations of the parties

The body leading a strike is bound to ensure together with the employer safety of people and property. In this respect trade unions do not have any other obligations apart the obligation to ensure the minimum services. However, the law imposes obligations to the employer by enumerating the prohibited actions to the employer upon the declaration of a strike. After the decision has been taken to declare a strike and during the strike the employer shall be prohibited from:

Taking any unilateral decision to stop the work (activities) of the enterprise (institution, organisation) or of a structural subdivision fully or in part;

Preventing all or individual employees from coming to their workstation;

Refusing to provide the employees with work or work tools;

Creating conditions that may completely or in part to stop the work of the entire enterprise, institution, organisation or of its separate units;

Making other decisions interfering with normal work (activities) of the enterprise, institution, organisation;

Employing new persons to perform the work of the striking employees except when the minimum services are not guaranteed.

Effects of legal and illegal strikes

In case of a strike, the performance of the employment contract with respect to the employees on strike shall be suspended, whereas their service shall be treated as continuous and they shall retain their social protection under the state social insurance scheme. Striking employees shall be released from their obligations to perform their work functions. Normally they are not paid even in case of lawful strike, unless the agreement reached during bargaining for the breaking off of the strike provides that they will be paid the full amount or part of their wage. Non-striking employees who are unable to perform their work by the reason of the strike shall be paid for the involuntary idle time or they may be transferred upon their consent to another job.

When a strike is declared the employer or employer organisation may apply to the court with a petition to declare the strike unlawful. In case of an unlawful strike the losses incurred by the employer must be compensated by the trade union with its own funds or from its assets. If the funds of the trade union prove insufficient to compensate the losses, by his or her decision the employer may use the funds set aside under the collective agreement for the payment of pay additional to the wage to the employees, other additional privilege pays and compensatory allowances not provided for by laws.

There are neither legal stipulations nor court praxis, which indicates the possibility to take disciplinary actions against the striking employees in case of illegal strike.

The Labour Code does not make clear statement on individual pecuniary liability of the striking employees. However, in some court cases the trade unions activists were subject to personal pecuniary liability for the damages inflicted by the strike because they called on apparently “wild cat action”.

Lockouts

Lockouts are not mentioned in the Labour Code.

Settlement of individual labour disputes

General remarks

Pursuant to Article 285 of the Labour Code, an individual labour dispute is understood as a disagreement between the employee and the employer regarding the exercise of the rights and fulfilment of the obligations established in the labour laws, regulatory acts, employment contract or collective agreement. These disputes shall be considered according to the procedure laid down in the Labour Code as well in the Code of Civilian Procedure.

Traditionally the Lithuanian labour law tries to implement the principle that individual labour disputes shall be resolved *in situ* - at an enterprise or in the structural subdivision of an enterprise, where the dispute comes up. Pursuant to Art.289 of the Labour Code, the Labour Disputes Commission shall be the mandatory primary body for dispute resolution, unless the Labour Code or other laws establish other dispute resolution procedures. To this end the Labour Code determines the principles of formation of the Labour Disputes Commission of an enterprise, its competences and the decision taking procedure of the Commission. Furthermore, the Labour Code indicates the cases when the disputes shall be resolved directly in the courts of general jurisdiction. As it was stressed above the system of labour courts does not exist in Lithuania so far.

The Labour Disputes Commission

An employee may apply to the Labour Disputes Commission within 3 months from the day when he or she found out or ought to have found out about the violation of his or her rights. The employer is not entitled to initiate the labour disputes at the Labour Disputes Commission.

If the Labour Disputes Commission has not been formed in an enterprise, upon receiving the application the employer must promptly appoint the clerk of the Labour Disputes Commission and initiate the formation of the Commission. The Labour Disputes Commissions shall be formed by an equal number of representatives of the employees and the employer. The meeting (conference) of the employees elects the employees' representatives to the Commission. The Commission shall be formed for a term of up to 2 years.

The clerk of the Labour Disputes Commission does all the preparation work for hearing the case in the Labour Disputes Commission. The Labour Disputes Commission shall consider the application of the employee within 14 days from the day of filing. The decisions of the Labour Disputes Commission shall be passed by agreement between the representatives of the employees and the employer - members of the Labour Disputes Commission. The employer is bound to execute the decision of the Labour Disputes Commission within 10 days from the day of the decision receipt, unless he or she has appealed against it to the court. In case of failure to execute the decision the employee shall apply to the court with the written request for

the enforcement of the decision according to the procedure established for the execution of court decision.

Major features of the procedure before a court of general jurisdiction

The Code of Civilian Procedures of 28 February 2002 contains a chapter laying down the peculiarities of resolving labour disputes in courts of general jurisdiction. Generally speaking, in labour cases the court has very wide discretion and can on its own initiative collect evidence, involve third parties in the procedures, exceed the demands of the claimants or apply the alternative means of protection of the infringed rights. The Code of Civilian Procedures sets short-time terms for the preparation and hearing of labour cases in courts of general jurisdiction. The case shall be prepared in 30 days for hearings and the decision shall be taken not later than 30 days after the beginning of the hearings.

Appeals and other recourses

It shall be distinguished between appeals against decisions of the Labour Disputes Commission and appeals against decisions of local courts. If the labour dispute is to be heard directly in court without applying to the Labour Disputes Commission, the decision of the court is subject to appeal to the district court within 30 days according to the procedure established by the Code of Civilian Procedures. The effective decisions of the district court are then subject to revision in the Supreme Court. The decisions of the Labour Disputes Commission are subject to appeal to the court within 10 days from the receipt thereof. The decision of the Labour Disputes Commission shall not be subject to appeal by the employer. The decision of the court is then subject to appeal to the district court according to the procedure established by the Code of Civilian Procedures. The effective decisions of the district court are subject for revising in the Supreme Court.

ILO Conventions ratified by Lithuania

Lithuania has ratified 39 [ILO Conventions](#).

Useful and relevant web links

The [Parliament \(Seimas\)](#)

[The Constitutional Court of the Republic of Lithuania](#)

[The Supreme Court of Lithuania \(in Lithuanian only\)](#)

[The Ministry of Social Security and Labour Ministry of Foreign Affairs](#)

[The State Labour Inspectorate \(in Lithuanian only\)](#)

[The State Social Insurance Fund Board](#)

[Department of Courts at the Ministry of Justice of the Republic of Lithuania \(the Judicial System of the Republic of Lithuania\)](#)

[Legal Information Centre](#)

[Lithuania and the Enlargement of the European Union](#)

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