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► **EU-ILO PROJECT**

**“ TOWARDS SAFE, HEALTHY AND
DECLARED WORK IN UKRAINE ”**

Employer's obligation to inform workers and ensure transparent and predictable working conditions

**Online training series
International and EU Labour Standards
Background paper**

June, 2020

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► EXECUTIVE SUMMARY

The new forms of work has led to an increase in the number of types of employment relationships.

In order to provide employees with improved protection against possible infringements of their rights and to create greater transparency on the labour market, EU countries considered necessary to subject employment relationships to formal requirements. To accomplish that, it was establish, through Council Directive 91/533/EEC, the general requirement that every employee must be provided with a document containing information on the essential elements of his contract or employment relationship. The obligation to provide information may be met by means of a written contract, a letter of appointment or one or more other documents or, if they are lacking, a written statement signed by the employer.

However, since the adoption of that Directive, labour markets underwent deeper changes due to demographic developments, digitalization and technological innovations, leading to the creation of new and more complex forms of employment. Some of which vary considerably from the traditional employment relationships with regard to predictability, thus creating uncertainty with regard to the applicable rights and the social protection of the workers concerned.

In this evolving world of work, Directive (EU) 2019/1152 emerged as a response to an increased need for workers to be fully informed about their essential working conditions, which should occur in a timely manner and in written form to which workers have easy access.

In addition, and to adequately frame the development of these new forms of employment, this Directive is also aimed at providing workers with a number of new minimum rights, to promote security and predictability in employment relationships, while achieving upward convergence across countries and preserving labour market adaptability.

In this context, the present background paper, prepared under the scope of the EU funded and ILO implemented technical cooperation project “Towards safe, healthy and declared work in Ukraine”¹, is intended to back up the training actions on the employer’s obligation to inform workers (on the essential aspects of the employment relationship) and ensure transparent and predictable working conditions, targeting national policy decision-makers and legal acts’ drafting experts.

It is expected that it may provide them with the technical knowledge and guidance on how to better align Ukrainian legal framework with International and European Labour Standards² and best practices, supporting the implementation of the EU-Ukraine Association Agreement (AA), facilitating the fight against undeclared work and fostering decent working conditions in Ukraine.

It should not be seen neither as an ILO code of practice or official guidelines, nor as a replacement of the positions of the ILO supervisory bodies.

Kyiv, 11 June 2020

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“Towards safe, healthy and declared work in Ukraine”

ILO Office for Central and Eastern Europe

¹ Additional information on this project can be found at <https://ilo.org/shd4Ukraine>.

² In particular, with the ILO Employment Relationship Recommendation, 2006 (No. 198) and with the EU Directives 91/533/EEC, of the Council, of 14 October 1991, on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship and 2019/1152, of the European Parliament and of the Council, of 20 June 2019, on transparent and predictable working conditions in the European Union.

► BACKGROUND — EMPLOYER'S OBLIGATION TO INFORM

Directive 91/533/EEC

The Council of the EU adopted the Directive 91/533/EEC, of 14 October 1991, on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (European Council, 1991), to provide employees with improved protection against possible infringements of their rights and to create greater transparency on the labour market, in view of the development of new forms of work that led to an increase in the number of different types of employment relationship.

It was considered indispensable to subject employment relationships to formal requirements (without prejudice to the form of the labour contract or employment relationship and to the proof as regards the existence and content of a labour contract or employment relationship), notably through the obligation of employers to inform employees, through a written document, not later than two months after the commencement of employment, on the essential elements of the labour contract or employment relationship, including:

- Identities of the parties;
- Place of work;
- Title, grade, nature or category of the work or brief specification or description of the work;
- Date of commencement of the contract or employment relationship;
- In the case of a temporary contract or employment relationship, the expected duration thereof;
- The amount of paid leave or the procedures for allocating and determining it;

- ▶ The length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or the way to determine them;
- ▶ The initial basic amount, the other component elements and the frequency of payment of the remuneration;
- ▶ The length of the employee's normal working day or week;
- ▶ Applicable collective agreement, if any.

In the case of expatriation of the employee, the latter must include the relevant information connected with his secondment and be given to the employee before its departure.

In addition, whenever any change in the main terms of the labour contract or employment relationship occurs, employers must also communicated them to employees in writing, at the earliest opportunity and not later than one month after the date of entry into effect of the change in question.

This directive also foresees that the obligation to provide information may be met by means of a written contract, a letter of appointment or one or more other documents or, if they are lacking, a written statement signed by the employer.

It also provides for the guarantee of employees who consider themselves wronged by employer's failure to comply with the above obligations to pursue their claims by judicial process after possible recourse to other competent authorities.

According to Article 424 of the EU-Ukraine Association Agreement, Ukraine undertook to gradually approximate its legislation to EU Directive 91/533/EEC by 31st August 2021, as set out in its Annex XL to Chapter 21.

Directive (EU) 2019/1152

Notwithstanding the fact that pursuant to Directive 91/533/EEC, the majority of workers in the Union have the right to receive written information about their working conditions, the Directive 91/533/EEC,

however, does not apply to all workers. In particular, it allows for the exclusion of employees having a contract or employment relationship with a total duration not exceeding one month, and/or with a working week not exceeding eight hours; or of a casual and/or specific nature.

In addition, gaps in protection have emerged from the new forms of employment resulting from the labour market developments since 1991. In fact, and since the adoption of the Directive 91/533/EEC, labour markets have undergone profound changes due to demographic developments, digitalisation and technological innovations, leading to the creation of new forms of employment. Some of them vary significantly from traditional employment relationships with regard to predictability, creating uncertainty on the applicable rights and the social protection of the workers concerned (European Parliament & European Council, 2019).

In face of the above, it was felt an increased need for employees to be informed about their essential working conditions, in a timely manner and in written form, as also foreseen in Principle No. 7 of the European Pillar of Social Rights (European Parliament, Council of the European Union, & European Commission, 2017).

In addition, in order to properly frame the development of these new forms of employment, to provide workers with a number of new minimum rights aimed at promoting and guaranteeing an adequate degree of transparency, security and predictability as regards their employment relationships and working conditions, while preserving a reasonable labour market adaptability and flexibility of non-standard employment (thus preserving its benefits to workers and employers), the Directive (EU) 2019/1152, of the European Parliament and of the Council, of 20 June 2019, on transparent and predictable working conditions in the European Union, was adopted.

The Directive (EU) 2019/1152, which entered into force in 31 July 2019 and repeals Directive 91/533/EEC (with effect from 1 August 2022), introduces substantive changes and innovations to the latter.

It limits the exclusions foreseen in Article 1(2) of Directive 91/533/EEC to employment relationships with predetermined and actual working hours

that amount to an average of three hours per week or less in a reference period of four consecutive weeks.

Includes, under its scope, workers who have no guaranteed working time, including those on zero-hour and some on-demand contracts, regardless of the number of hours they actually work.

Introduces the possibility of provision of the required information in electronic form, in the cases where the information is accessible to the worker, can be stored and printed, and employer retains proof of transmission or receipt.

Moreover, it enlarges the list of essential aspects of the labour contract or employment relationship (foreseen in Directive 91/533/EEC) regarding which workers are to be informed in writing, in order to take account of developments in the labour market, in particular the growth of non-standard forms of employment.

The Directive (EU) 2019/1152 also reduced substantially the period within which the information on the essential aspects of the employment relationship should be provided.

Other innovation regards the limitation of the maximum duration of the probationary period of an employment relationship.

Moreover, it provides that employers cannot neither prohibit a worker from taking up employment with other employers outside the work schedule³ established with that employer, nor subject a worker to adverse treatment for doing so.

It also establishes a minimum predictability of work when a worker's work pattern⁴ is entirely or mostly unpredictable and introduces specific

³ 'Work schedule' means the schedule determining the hours and days on which performance of work starts and ends.

⁴ 'Work pattern' means the form of organisation of the working time and its distribution according to a certain pattern determined by the employer.

measures to prevent abusive practices in the use of on-demand or similar employment contracts.

It also foresees that a worker, when some conditions are verified, may request to the employer a form of employment with more predictable and secure working conditions, where available, and receive a reasoned written reply.

Regarding the training that employers legally have to provide to workers, the Directive provides that it shall be provided for free, count as working time and take place during working hours (if possible).

The Directive also provides that social partners may maintain, negotiate, conclude and enforce collective agreement establishing working conditions that differ from the foreseen minimum requirements relating to working conditions, if they respect the overall protection of workers.

The Directive also foresees the institution of several legal presumptions and early settlement mechanisms, to be applied when the worker has not received in due time all or part of the documents s/he is entitled to.

As for the right to redress, it provides that workers should have access to effective and impartial dispute resolution and a right to redress in the case of infringements of the above rights.

The Directive also foresees the introduction of measures to protect workers from any adverse treatment by the employer and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with above rights.

Furthermore, it urges Member States to take the necessary measures to prohibit the dismissal (or its equivalent) and all preparations for dismissal of workers, on the grounds that they have exercised the above rights and the corresponding inversion of the burden of the proof to the employer.

Finally, the Directive provides for the introduction of effective, proportionate and dissuasive penalties for the violations of the above provisions.

▶ MAIN TAKEOVERS FOR POLICY DECISION-MAKERS AND LEGAL ACTS' DRAFTING EXPERTS

Purpose and scope

The provisions of Directive (EU) 2019/1152 are aimed at improving working conditions through the promotion of more transparent and predictable employment relationships⁵ while ensuring labour market adaptability.

It applies to all workers and employers who have a labour contract or employment relationship.

Nevertheless, the following provisions do not apply to seafarers or sea fishermen:

- ▶ Information to be provided if the work pattern is entirely or mostly unpredictable and related to the identity of the social security institution [points (m) and (o) of Article 4(2)];
- ▶ Additional information for workers sent to another country (Article 7);
- ▶ Parallel employment (Art. 9);
- ▶ Minimum predictability of work (Art. 10); and
- ▶ Transition to another form of employment (Art. 12).

In addition, some exceptions and derogations to its application can also be considered by the Member States. For example:

- ▶ Workers who have an employment relationship in which their predetermined and actual working time is equal to or less than

⁵ Employment relationship can be defined as the one within which a natural person (employee) undertakes, by way of remuneration, to provide its intellectual or manual activity to another (employer), under his direction, supervision, control and authority.

an average of three hours per week in a reference period of four consecutive weeks⁶ can be excluded from its application. This exclusion, however, cannot be applied to an employment relationship where no guaranteed amount of paid work is predetermined before the employment starts;

- ▶ Provide, on objective grounds, that the provisions regarding the minimum requirements relating to working conditions (laid down in Articles 8 to 14) are not to apply to civil servants, public emergency services, the armed forces, police authorities, judges, prosecutors, investigators or other law enforcement services;
- ▶ Not to apply to natural persons in households acting as employers where work is performed for those households the obligations regarding the transition to another form of employment, mandatory training and favourable presumptions⁷.

Employer's obligation to provide information

Employers have the legal obligation to inform workers of the essential aspects of the employment relationship.

Information support

The obligation of the employer to provide each employee with information on the main aspects of the employment relationship has to be provided in writing.

The foreseen written information shall be provided and transmitted on paper.

However, in alternative, it can be provided and transmitted in electronic form but, in these cases, only if:

- ▶ The information is accessible to the employee;

⁶ In this case, time worked with all employers forming or belonging to the same enterprise, group or entity shall count towards that three-hour average.

⁷ Set out, respectively, in Articles 12, 13 and in point (a) of Article 15(1).

- ▶ The information can be stored and printed; and
- ▶ The employer retains proof of transmission or receipt.

The required information shall be provided individually to the worker in the form of one or more documents.

A very common way, in several jurisdictions, of employers fulfilling their legal obligation to inform workers on the essential aspects of the employment relationship is the formalization of the employment relationship through the conclusion of a “labour contract”⁸, here understood as a formal written contract between two parties (employer and employee) that defines the main aspects of the employment relationship, proves its existence and regulates the relation between the parties.

According to Directive (EU) 2019/1152, Member States may develop templates and models for the documents to be used in the provision of the information required and put them at the disposal of workers and employers, including by making them available on a single official national website or by other suitable means.

It is important to note, however, that while the employer’s provision of written information on the essential aspects of the employment relationship or the existence of a formal written labour contract proves the existence of an employment relationship, their absence does not necessarily mean that there is no employment relationship.

In fact, the existence of an employment relationship does not depend on the employer’s provision of written information on the essential aspects of the employment relationship nor on the existence of a formal written labour contract between the parties.

Indeed, an employment relationship can exist when the employer fails to provide written information on the essential aspects of the employment relationship, when there is no formal written labour contract and even when exists a contrary arrangement (contractual or otherwise) between

⁸ Also frequently called “employment agreement” or “employment contract”.

the parties, whenever a natural person provides its intellectual or manual activity to another, by way of remuneration, under his direction, supervision, control and authority.

Information content and timing — for the generality of employees

The essential aspects of the employment relationship regarding which the employers are obliged to inform workers have to include, at least, the following:

- 1) The identities of the parties to the employment relationship;
- 2) The place of work; where there is no fixed or main place of work, the principle that the worker is employed at various places or is free to determine his or her place of work, and the registered place of business or, where appropriate, the domicile of the employer;
- 3) The title, grade, nature or category of work for which the worker is employed or a brief specification or description of the work;
- 4) The date of commencement of the employment relationship or, in the case of a fixed-term employment relationship, the end date or the expected duration thereof;
- 5) In the case of temporary agency workers, the identity of the user undertakings, when and as soon as known;
- 6) The duration and conditions of the probationary period (if any)⁹;
- 7) The training entitlement provided by the employer (if any)¹⁰;

⁹ This information can be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those points. In order to facilitate the latter, however, Directive (EU) 2019/1152 provides that Member States shall ensure that the information on the laws, regulations and administrative or statutory provisions or universally applicable collective agreements governing the legal framework applicable which are to be communicated by employers is made generally available free of charge in a clear, transparent, comprehensive and easily accessible way at a distance and by electronic means, including through existing online portals.

¹⁰ This information can be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those points.

- 8) The amount of paid leave to which the worker is entitled (or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave)¹¹;
- 9) The procedure to be observed by the employer and the worker, including the formal requirements and the notice periods, where their employment relationship is terminated (or, where the length of the notice periods cannot be indicated when the information is given, the method for determining such notice periods)¹²;
- 10) The remuneration (including the initial basic amount, any other component elements, if applicable, indicated separately)) and the frequency and method of payment¹³;
- 11) If the work pattern is entirely or mostly predictable, the length of the worker's standard working day or week and any arrangements for overtime and its remuneration and, where applicable, any arrangements for shift changes¹⁴;
- 12) If the work pattern is entirely or mostly unpredictable, the employer shall inform the worker of:
 - a) The principle that the work schedule is variable, the number of guaranteed paid hours and the remuneration for work performed in addition to those guaranteed hours;
 - b) The reference hours and days¹⁵ within which the worker may be required to work;
 - c) The minimum notice period to which the worker is entitled before the start of a work assignment and, where applicable, the deadline for cancellation.

¹¹ Ibidem.

¹² Ibidem.

¹³ Ibidem.

¹⁴ Ibidem.

¹⁵ 'Reference hours and days' means time slots in specified days during which work can take place at the request of the employer.

- 13) Any collective agreements governing the worker's conditions of work or in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of such bodies or institutions within which the agreements were concluded;
- 14) Where it is the responsibility of the employer, the identity of the social security institutions receiving the social contributions attached to the employment relationship and any protection relating to social security provided by the employer¹⁶.

The above information, where not previously provided, is to be provided individually to the worker, in the form of one or more documents, within the following time frames

- ▶ The information referred to in the above points 1 to 4, 6 and 10 to 12 - during a period starting on the first working day and ending no later than the seventh calendar day;
- ▶ The information referred to in the above points 5, 7 to 9, 13 and 14 - within one month of the first working day.

Any change in the above essential aspects of the employment relationship has to be communicated in the form of a document by the employer to the worker at the earliest opportunity and at the latest on the day on which it takes effect¹⁷.

It is worth mentioning, at this point, the additional employer's obligation to inform workers on Occupational Safety and Health (OSH) issues, as foreseen in Article 10 of Directive 89/391/EEC. Accordingly, the employer shall ensure that workers and/or their representatives in the undertaking and/or establishment, as well as employers of workers from any outside undertakings and/or establishments engaged in work in his undertaking

¹⁶ This information can be given in the form of a reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those points.

¹⁷ The obligation to communicate changes in the essential aspects of the employment relationship do not apply to changes that merely reflect a change in the laws, regulations and administrative or statutory provisions or collective agreements that were cited as a reference in previous information documents.

and/or establishment and their workers, receive all the necessary information concerning:

- 1) The safety and health risks and protective and preventive measures and activities in respect of both the undertaking and/or establishment in general and each type of workstation and/or job;
- 2) The measures taken for first aid, fire-fighting and the evacuation of workers, including the identification of the workers designated to implement them, their training arrangements and available equipment.

In addition, employer shall also take appropriate measures so that workers with specific functions in protecting the safety and health of workers, or workers' representatives with specific responsibility for the safety and health of workers shall, to carry out their functions, have access to:

- 1) The assessment of the risks to safety and health at work (including those facing groups of workers exposed to particular risks);
- 2) The preventive and protective measures to be taken and, if necessary, the protective equipment to be used;
- 3) The list of occupational accidents resulting in a worker being unfit for work for more than three working days;
- 4) The drawn-up reports on occupational accidents suffered by his workers;
- 5) The information yielded by protective and preventive measures, inspection agencies and bodies responsible for safety and health.

Information content and timing — Additional information for workers sent to another country¹⁸

Regarding workers required to work in other country than the one in which they habitually work, the employer shall provide each one of them,

¹⁸ Unless otherwise established, the obligation to provide additional information to workers required to work in other country shall not apply if the duration of each work period outside the country in which the worker habitually works is four consecutive weeks or less.

in addition to the information on the essential aspects mentioned above, at least the following additional information:

- 1) The country or countries in which the work abroad is to be performed and its anticipated duration;
- 2) The currency to be used for the payment of remuneration¹⁹;
- 3) Where applicable, the benefits in cash or kind relating to the work assignments;
- 4) Information as to whether repatriation is provided for, and if so, the conditions governing the worker's repatriation.

When the worker is required to work in other country than the habitually one, the required information must be provided before the worker's departure and shall include:

- ▶ The essential aspects of the employment relationship to be provided to the generality of the workers; and,
- ▶ The above additional information for workers sent to another country.

Any change in the essential aspects of the employment relationship of a worker sent to another country has to be communicated in the form of a document by the employer to the worker at the earliest opportunity and at the latest on the day on which it takes effect²⁰.

Information content and timing — Additional information for posted workers²¹ (covered by Directive 96/71/EC)²²

Posted workers should, in addition, be informed of:

¹⁹ This information may, where appropriate, be given in the form of a reference to specific provisions of laws, regulations and administrative or statutory acts or collective agreements governing that information.

²⁰ The obligation to communicate changes in the essential aspects of the employment relationship do not apply to changes that merely reflect a change in the laws, regulations and administrative or statutory provisions or collective agreements that were cited as a reference in previous information documents.

²¹ 'Posted worker' means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works [Article 2(1) of Directive 96/71/EC].

²² Unless otherwise established, the obligation to provide additional information to posted workers shall not apply if the duration of each work period outside the country in which the worker habitually works is four consecutive weeks or less.

- 1) The remuneration to which the worker is entitled in accordance with the applicable law of the host country²³;
- 2) Where applicable, any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging;
- 3) The link to the single official national website developed by the host country²⁴.

In case of a posted workers, the required information must be provided before the worker's departure and shall include:

The essential aspects of the employment relationship to be provided to the generality of the workers; and,

The additional information for workers sent to another country; and

The above additional information for posted workers.

Any change in the essential aspects of the employment relationship of a posted worker has to be communicated in the form of a document by the employer to the worker at the earliest opportunity and at the latest on the day on which it takes effect²⁵.

Minimum requirements relating to working conditions

As we have seen above, Directive (EU) 2019/1152 provides for the obligation of employers to ensure that workers are fully informed about their essential working conditions, in a timely manner and in written form to which workers have easy access.

²³ This information may, where appropriate, be given in the form of a reference to specific provisions of laws, regulations and administrative or statutory acts or collective agreements governing that information.

²⁴ Pursuant to Article 5(2) of Directive 2014/67/EU.

²⁵ The obligation to communicate changes in the essential aspects of the employment relationship do not apply to changes that merely reflect a change in the laws, regulations and administrative or statutory provisions or collective agreements that were cited as a reference in previous information documents.

In addition, considering the increased need to adequately frame the development of new forms of employment in this evolving world of work, this Directive also provides workers with a number of new minimum rights, as discussed below, aimed at promoting security and predictability in employment relationships while achieving upward convergence across Member States and preserving labour market adaptability.

Maximum duration of any probationary period

The Directive establishes that, where an employment relationship is subject to a probationary period, the latter shall not exceed six months²⁶.

In the case of fixed-term employment relationships:

- ▶ The length of such a probationary period should be proportionate to the expected duration of the contract and the nature of the work;
- ▶ Where there a renewal of a contract for the same function and tasks occurs, the employment relationship shall not be subject to a new probationary period.

Parallel employment

According to the Directive (EU) 2019/1152, an employer cannot:

- ▶ Prohibit a worker from taking up employment with other employers, outside the work schedule established with that employer; and
- ▶ To subject a worker to adverse treatment for doing so.

Member States are allowed, however, to provide for the use of several incompatibility restrictions by employers, on the basis of objective grounds, such as:

- ▶ Health and safety;
- ▶ Protection of business confidentiality

²⁶ The exceptions to this maximum duration rule of the probationary period are: (1) The possibility of Member States providing for longer probationary periods, on an exceptional basis, when justified by the nature of the employment or in the interest of the worker; and (2) When the worker has been absent during the probationary period (in which case, Member States may provide that the probationary period can be extended for the period corresponding to the duration of the absence).

- ▶ Integrity of the public service; or
- ▶ Avoidance of conflicts of interests.

Minimum predictability of work

Directive (EU) 2019/1152 also establishes a minimum predictability of work, according to which, where a worker's work pattern is entirely or mostly unpredictable:

- 1) The worker shall not be required to work by the employer unless:
 - a) The work takes place within the predetermined reference hours and days agreed; and
 - b) The worker is informed by the employer of a work assignment within the notice period agreed.
- 2) When one or both of the above requirements is not fulfilled, the worker have the right to refuse a work assignment without adverse consequences.
- 3) The worker is entitled to a compensation if the employer cancels, after a specified reasonable deadline, the work assignment previously agreed with the worker.

Complementary measures for on-demand contracts

In addition, the Directive foresees that, if it is legally foreseen the use of on-demand or similar employment contracts, one or more of the following (or equivalent) measures to prevent abusive practices should be introduced:

- 1) Limitations on their use and duration; and
- 2) Rebuttable presumption of the existence of an employment relationship with a minimum amount of paid hours based on the average hours worked during a given period.

Transition to another form of employment

A worker, with at least six months' service with the same employer, who completed the probationary period (if any) may request a form of employment with more predictable and secure working conditions, where available, and receive a reasoned written reply from the employer within one month of the request.

When the employer is a natural person, micro, small or medium enterprise:

- ▶ The above deadline may be extended to no more than three months; and
- ▶ It may be foreseen an oral reply to a subsequent similar request submitted by the same worker (if the justification for the reply as regards the situation of the worker remains unchanged).

Mandatory training

As for the training that employers have legally to provide to workers to carry out the work for which they are employed, the Directive provides that it shall be provided:

- ▶ Free of cost to the worker;
- ▶ Count as working time; and,
- ▶ Take place during working hours (where possible).

Collective agreements

Social partners should be able to maintain, negotiate, conclude and enforce collective agreements establishing working conditions different from the above minimum requirements relating to working conditions, since they respect the overall protection of workers.

Horizontal provisions

Legal presumptions and early settlement mechanism

The Directive also foresees the institution of legal presumptions and early settlement mechanisms, according to which, if the worker has not

received in due time all or part of the documents s/he is entitled to, and eventually subjected to prior notification of the employer and his failure to provide the missing information in a timely manner:

1. The worker shall benefit from favourable presumptions, which employers shall have the possibility to rebut; and/or
2. The worker shall have the possibility to submit a complaint to a competent authority or body and to receive adequate redress in a timely and effective manner.

Right to redress

The Directive also commands Member States to ensure that workers²⁷ have access to effective and impartial dispute resolution and a right to redress in the case of infringements of the above rights.

Protection against adverse treatment or consequences

The Directive also provides for the introduction of measures to protect workers (including those who are workers' representatives) from any adverse treatment by the employer and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the above rights.

Protection from dismissal and burden of proof

Furthermore, the Directive establishes the obligation of the Member States to take the necessary measures to prohibit the dismissal (or its equivalent) and all preparations for dismissal of workers, on the grounds that they have exercised the above rights.

It also foresees that when workers consider that they have been dismissed, or have been subject to measures with equivalent effect, on the grounds that they have exercised the above rights:

²⁷ Including those whose employment relationship has ended.

- ▶ They should be able to request employer to provide duly substantiated grounds for the dismissal or the equivalent measures, to which the employer shall respond in writing.
- ▶ Establish facts, before a court or other competent authority or body, from which it may be presumed that there has been such a dismissal or equivalent measures, it should be for the employer to prove that the dismissal was based on grounds other than that they have exercised the above rights²⁸.

Penalties

Finally, the Directive provides for the obligation of Member States for the introduction of effective, proportionate and dissuasive penalties for the infringements to the legislation transposing, or already ensuring, the above rights.

²⁸ As for the latter: (1) it should not prevent Member States from introducing rules of evidence which are more favourable to workers; (2) it should not be required in proceedings in which it is for the court or other competent authority or body to investigate the facts of the case; and (3) it should not apply to criminal proceedings (unless otherwise provided by the Member State).

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