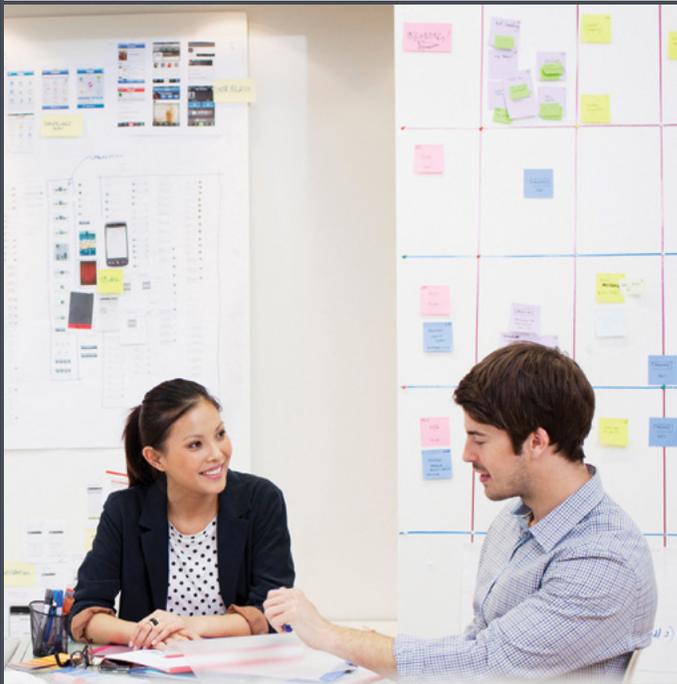


# Employment Law Handbook

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Legal

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# Disclaimer

This handbook aims to provide the reader only with a general understanding of Georgian labour legislation effective at the time of writing. It neither purports to provide nor is it intended to replace professional legal advice or any other advice.

Any reliance made on the information contained in this handbook is your sole responsibility and Deloitte will not be held liable for any losses that may arise thereby. Full professional legal advice should be sought when dealing with specific situations.

# 1. Employment law: sources, scope, and key principles

## 1.1 What are the sources of employment law?

The main sources of employment law in Georgia are the Constitution, the Labour Code (the “Code”), the Civil Code, and the Law of Georgia On Occupational Safety. Other significant normative acts include the Law of Georgia On Labour Migration and Decree No. 417 of the government of Georgia (dated 7 August 2015) concerning the employment of migrant workers (“Decree No. 417”). Separate laws and regulations apply to civil servants, which this handbook does not cover.

The Civil Code applies to labour-related matters that are not governed by the Code or other special regulations.

## 1.2 What preconditions need to be satisfied for the Code to apply?

Article 1(1) of the Code *“regulates labour and its concomitant relations in the territory of Georgia, unless otherwise governed by another special law or international agreement of Georgia”*.

This article introduces a two-tier test to establish whether the Code applies. The first tier (“labour and its concomitant relations”) lays out the material scope, whilst the second tier (“in the territory of Georgia”) specifies the territorial scope of the Code.

The analysis of whether a particular relationship is governed by the Code naturally starts with the first tier of the test. The Code defines labour relations as *“work carried out by an employee for an employer under organised labour conditions in exchange for remuneration”*. The Code does not explicitly define “concomitant relations”; thus, whether a relationship qualifies as such will be subject to interpretation. If the analysis establishes that a relationship falls within the ambit of the above definition, the conditions for the material scope will be satisfied.

As far as the second tier of the test is concerned (i.e. the territorial scope), as Article 1(1) of the Code stipulates, the Code applies to labour and its concomitant relations *in the territory of Georgia*.

The second tier of the test would be easily satisfied in the majority of cases where both the employer and the employee are based in Georgia, and the work is also carried out in Georgia. However, whether such relations are taking place in Georgia is not always straightforward. The wording of the article leaves room for interpretation as to whether and to what extent the Code applies to cross-border labour relations.

## 1.3 What are the key principles of employment law?

### Prohibition of discrimination

The most significant principle of the Code is probably the **prohibition of discrimination** (both direct and indirect). It applies to not only labour relations but the pre-contractual stage as well. The latter includes the publication of job advertisements as well as the selection stage.

The Code prohibits discrimination on the grounds of race, skin colour, language, ethnicity or social status, nationality, origin, material status or position, place of residence, age, sex, sexual orientation, marital status, disability, as well as religious, social, political or other affiliation, including affiliation with trade unions, political or other opinions, or on other grounds.

Importantly, the need to differentiate between persons that arises from the essence or specific nature of the work or the conditions of its performance, that serves to achieve a legitimate objective, and which is a proportionate and necessary means of achieving that objective, does not qualify as discrimination. This exception is of particular significance at the pre-contractual stage, as discussed in Paragraph 2.1 below.

### **Prohibition of sexual harassment**

Recent amendments to the Code introduced the concept of **“sexual harassment”** which is defined as unwanted conduct of a sexual nature towards a person with the purpose and/or effect of violating his/her dignity and creating an intimidating, hostile, humiliating, degrading, or offensive environment for him/her.

### **Equal treatment**

Another important principle of the Code is that of **equal treatment**. At the pre-contractual stage, an employer is obliged to inform a candidate of the provisions of Georgian legislation governing this principle and available legal remedies in that respect. The employer must also take measures aimed at ensuring compliance with the principle of equal treatment of persons at the workplace, including by inserting antidiscrimination provisions in internal labour regulations, collective agreements, and other documents and ensuring that they are observed.

### **The principle of not worsening an employee’s position**

Finally, the underlying principle of the Code is that **an employment contract must not put an employee in a worse position compared to the minimum standards established by the provisions of the Code.**

# 2. Important considerations for the pre-contractual stage

## 2.1 What information can an employer obtain about an employee during the pre-contractual stage?

An employer has the right to obtain information about a candidate but certain limitations are in place regarding the extent of such information. Specifically, the information sought must **relate to** the performance of work and be **necessary** to assess the ability of a candidate to perform specific work and to make the relevant decision. Employers also have the right to verify the accuracy of information submitted by candidates. Unsuccessful candidates have the right to request the return of submitted documents.

Importantly, an employer is prohibited from requesting information from a candidate regarding his/her religion, faith, disability, sexual orientation, ethnic affiliation, or pregnancy, except when differentiation is necessary as mentioned in Paragraph 1.3(a) above.

For clarity, the conclusion of an employment contract (or, for unsuccessful candidates, notification of refusal to employ) marks the end of the pre-contractual stage.

## 2.2 Is an employer required to provide a candidate with any information?

The employer is obligated to provide a candidate with certain information, specifically:

- the work to be performed;
- the form (written or oral) and the period (fixed-term or open-ended) of an employment contract;
- working conditions;
- the legal status of an employee in labour relations;
- the remuneration.

Furthermore, at the pre-contractual stage, an employer must inform a candidate about the provisions of Georgian legislation governing the principle of equal treatment and available legal remedies in that respect.

# 3. Terms and conditions of employment

## 3.1 Does an employment contract need to be in writing?

Generally, employment contracts need to be in writing. As an exception to this general rule, an employment contract can be oral if the relevant labour relations do not exceed three months.

## 3.2 Are there any minimum terms and conditions that must be present in an employment contract?

The Code sets out the essential terms of an employment contract, namely:

- the start date of work and the term of labour relations;
- the work time and rest time;
- the workplace;
- the position and type of work to be performed;
- the amount of compensation and the payment procedure;
- the procedure for overtime work compensation;
- the duration of paid and unpaid leaves of absence and the procedure for granting them.

## 3.3 Is it possible to conclude an employment contract for a probationary period?

The Code provides the possibility of concluding a probationary employment contract with an employee. However, such a contract can only be concluded **once** and its term may **not exceed 6 months**. Furthermore, the contract **must be in writing**.

The probation period should be compensated. An employer may, at any time during the probationary period, terminate the probationary employment contract in place or conclude an employment contract with the employee. Notably, labour relations within the context of probation are not subject to the general rules for the termination of employment contracts, unless otherwise provided in the relevant employment contract.

## 3.4 What are the limits on working hours?

As a general rule, work time — which does not include breaks or rest time — may not exceed 40 hours per week. Exceptions are in place for enterprises with specific operating conditions requiring more than eight hours of uninterrupted production/work, in which case work time must not exceed 48 hours per week. A list of such industries is provided by the law.

There are specific requirements in place for employees under the age of 18 and for shift workers. Furthermore, employing minors, pregnant women, women who have recently given birth, or nursing mothers for night shifts (from 22:00 to 6:00) is prohibited.

### **3.5 Is overtime compensated?**

Generally, labour exceeding 40 hours per week qualifies as overtime, which must be compensated at an increased hourly rate. Alternatively, the parties may agree that an employer will grant an employee additional time off in lieu of compensation for overtime work.

Importantly, it is mandatory to obtain the consent of pregnant women, women who have recently given birth, persons with disabilities, or minors before requiring them to work overtime.

### **3.6 Are employers obliged to notify any authority regarding the employment of a migrant worker?**

Decree No. 417 requires “local employers” to notify the Social Services Agency (a body that operates under the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia) regarding the employment of a migrant worker within 30 days after the relevant employment contract has entered into force. For the purposes of this decree, the term “local employer” includes, amongst others, companies registered in Georgia and representative offices of foreign companies in Georgia.

## **4. Employee rights and safeguards**

### **4.1 How many days of leave is an employee entitled to?**

An employee has the right to at least 24 working days of a paid leave and 15 days of unpaid leave annually. An employment contract may contain different terms. However, as mentioned above, such terms may not worsen the position of an employee.

### **4.2 What are the maternity (parental) leave entitlements?**

Upon request, an employee has the right to maternity (for the pregnancy and post-natal period) and childcare leave of absence of 730 calendar days, out of which 183 calendar days are compensated. Under exceptional circumstances (namely in the event of pregnancy complications or multiple births) 200 calendar days must be compensated.

Upon request, employees who have adopted an infant under the age of 12 months have a right to a new-born adoption leave of absence of 550 calendar days counted from the day of the birth of the child, out of which 90 calendar days must be compensated.

Maternity and childcare leaves and new-born adoption leaves of absence are compensated by the state budget of Georgia. The compensation limit is GEL 1,000, but the parties may agree on additional payment.

# 5. Termination of employment

## 5.1 Are employers required to give a notice of termination to their employees? What notice periods are applicable?

The Code provides a restrictive and exhaustive list of grounds on which an employment contract can be terminated:

- economic circumstances, technological, or organisational changes requiring downsizing;
- the expiration of an employment agreement;
- completion of the work stipulated by the employment contract;
- voluntary resignation of an employee in written form;
- a written mutual agreement;
- incompatibility of an employee's qualifications or professional skills with the position held/work to be performed by the employee;
- a gross violation by an employee of his/her obligations under an individual employment contract or a collective agreement and/or of internal labour regulations;
- violation by an employee of his/her obligations under an individual employment contract or a collective agreement and/or of internal labour regulations, if any of the disciplinary actions under the above individual employment contract or collective agreement and/or internal labour regulations were already administered to the employee during the last year;
- long-term disability, unless otherwise provided by an employment contract, if the disability period exceeds 40 consecutive calendar days or the total disability period exceeds 60 calendar days within six months, and the employee has also already used his/her leave of absence under the Code;
- entry into force of a court judgement or decision precluding the employee from carrying out the work;
- a court decision that has entered into force whereby a strike was found illegal pursuant to the Code;
- the death of an employer (in case of natural persons) or an employee;
- the initiation of liquidation proceedings against an employer (in case of legal persons);
- other objective circumstances justifying termination of an employment contract.

The obligation to provide advance notice of termination does not always apply. An employer is obliged to give a written notice at least 30 days in advance and severance pay of at least one-month's salary only when the employment is terminated on the grounds listed below:

- economic circumstances, technological, or organisational changes requiring downsizing;

- incompatibility of an employee’s qualifications or professional skills with the position held/work to be performed by the employee;
- long-term disability, unless otherwise provided for by an employment contract, if a disability period exceeds 40 consecutive calendar days or the total disability period exceeds 60 calendar days within six months, and the employee has also already used his/her leave of absence under the Code;
- other objective circumstances justifying termination of an employment contract.

An employer may terminate an employment contract on the same grounds by giving written notice no less than three days prior, provided that the employee is granted severance pay of at least two months’ salary.

If an employee resigns voluntarily, they must give written notice to their employer 30 days in advance.

### **5.2 Does an employee have the right to appeal a dismissal order? What are the applicable procedures?**

An employer must give an employee written substantiation of the grounds for terminating an employment contract within seven calendar days after the employee has submitted the request. The employee may then appeal the dismissal order in court within 30 calendar days after receiving the employer’s written substantiation. After the 30-day time limit elapses, the employee’s right to appeal is considered statute-barred.

If the employer fails to provide written substantiation within seven calendar days as referred to above, the same time-limit will apply, and the employee will be able to appeal the dismissal in court within 30 calendar days. However, in this case, the onus of proof for the facts of the case will shift to the employer.

### **5.3. Is it possible for employers to instruct their employees to remain on “garden leave”?**

Garden leave refers to the practice whereby an employee — who has resigned or whose labour relations have been otherwise terminated — is required to stay away from work during the notice period whilst remaining on payroll.

The Code does not contain any explicit prohibition that would preclude employers from instructing their employees to go on garden leave during the notice period.

## 6. Occupational Safety

The law of Georgia “On Occupational Safety” applies to every field of economic activity. The supervisory body designated by the law is authorised to inspect, search, and check any workplace subject to inspection at any time of the day without prior notice, which is necessary for the effective enforcement and implementation of workplace safety norms.

The law lays out a number of obligations. For instance, by law, an employer must appoint a workplace safety specialist — a duly qualified person who will attend to the implementation and management of workplace safety measures in order to ensure workplace safety compliance. This requirement applies to every sector of the economy.

Furthermore, there are specific requirements in place for persons engaged in severe, harmful, and hazardous activities involving increased risk, e.g., they must register in the Registry of Economic Activities. The list and the details of these activities are regulated by a separate decree of the Government of Georgia. It is prohibited to conduct such activities without prior registration.

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