



# GMS Flash Alert



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## European Union - EU Adopts New Rules for Working Conditions

On 13 June 2019, the European Union (EU) adopted a Directive<sup>1</sup> on transparent and “predictable” working conditions.

EU member states have three years to transpose the Directive in their respective national legislation. The Directive outlines additional requirements for employers when they recruit workers and when changes occur during the employment. Further, the Directive sets out a number of minimum rights for workers that employers must provide and about which they need to inform the worker.

Workers who have employment contracts according to current rules can request that their employers provide them with a new contract that complies with the new rules, once these are implemented.

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### WHY THIS MATTERS

The majority of workers in the EU have a right to receive written information about their working conditions, pursuant to Directive 91/533/EEC<sup>2</sup>. As this Directive dates back to 1991, the new Directive seeks to adopt rules that address the various developments that employment relationships have undergone since then.

The changes to the current legal framework for working conditions and employment relationships will require that employers significantly change their employment contracts and provide employees with more detailed information about working conditions. Further, employers must provide workers with certain minimum rights.

If employers fail to provide all that is required within a given deadline, they risk becoming subject to litigation. It is therefore important that HR departments, in particular, take note of the changes and inform the relevant stakeholders in their organizations. It is recommended that a plan be formulated with minimal delay concerning the implementation of the new requirements.

Implementation of the new rules will require a revision of policies and employment contracts, especially contracts that concern more flexible employment and contracts that are subject to changes.

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## Details on New Directive

### Personal Scope

Generally, the Directive applies to all workers who work more than three hours per week for at least one month<sup>3</sup>. This means that if a worker works three hours per week for more than a month, the Directive applies to that employment relationship.

Those who are self-employed, seafarers, and fishermen are excluded from the Directive. Member states will also be able to exclude certain other categories from the Directive, e.g., civil servants, armed forces, and police, provided that this is justified on objective grounds.

Platform workers, apprentices, on-demand workers, domestic workers, etc. fall within the personal scope of the Directive, as long as they have a status of “worker”<sup>4</sup>. “Bogus self-employed”<sup>5</sup> are within the scope of the Directive too.

### Employment Contracts, Content, and Deadlines

An employer must inform its workers about essential aspects of the employment relationship on the employee’s first working day and no later than the seventh calendar day. The essential aspects of the employment relationship include, among others:

- the identities of the parties to the relationship and the place and the nature of work;
- the initial basic amount of remuneration and the amount of paid leave;
- the duration of the standard working day or week when the work pattern is predictable;
- the identity of the social security institution receiving social security contributions, where this is the responsibility of the employer.

In cases where the work pattern is largely or entirely unpredictable, employers will have to inform workers of the reference hours and days within which they may be required to work, the minimum period of advance notice the workers shall receive before the start of work, and the number of guaranteed hours.

If there are changes in the employment, employers must provide these changes described in writing to workers as soon as possible or on the day when the changes are effective, at the latest.

Workers who have employment contracts that date before the implementation of this Directive, can request a new employment contract in accordance with the rules stipulated in the Directive. The employer is not obliged to provide new employment contracts to these workers.

### Minimum Rights for Workers

The Directive outlines a number of basic rights that employers must provide to workers, and these include rights:

- to take up a job in parallel with another employer;
- to limit the probationary period to a maximum of six months, with longer periods allowed only in case this is in the interest of the worker or is justified by the nature of the work;

- to request, after at least six months service with the same employer, employment with more predictable and secure working conditions;
- to receive training cost-free, when such training is required by the EU or national legislation.

Furthermore, the Directive sets out rules that protect the workers who make use of the rights given to them in the Directive (i) from sanctions by employers and (ii) from the termination of employment.

## Channels of Communication

The Directive takes the use of digital communication tools into account and allows for the information mentioned above to be provided to workers by electronic means.

Further, member states are encouraged to provide templates to employers, as the employers must be able to provide detailed information about employment to workers on short notice. The EU Commission will support member states in this work.

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## KPMG NOTE

In conclusion, the Directive presents additional requirements to employers when they recruit workers and when changes in the employment occur. Apart from changes in the substance of the contracts, employers should act quickly. It is therefore crucial for HR departments to be prepared with clear and efficient processes in order to avoid:

- any breach of EU rules for employment; and
- putting the organization at risk of litigation.

However, beforehand, employers ought to review current contracts and processes and identify the necessary changes in their current set-up for employment contracts.

As this is legislation on the EU level, the new rules do not take into account different ways in which labour markets are organized in each member state. Ultimately, the additional requirements for employers could have the effect of making the labour market in the EU less flexible, which then could have a negative effect on the employment rate, especially in terms of project-based employment, short-term employment, etc.

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## FOOTNOTES:

1 To see "Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union," click [here](#). Also, see the News Release, "[Transparent and predictable working conditions](#)," from the Employment, Social Affairs & Inclusion Directorate-General.

2 To see "Council 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," click [here](#).

3 Note, the members states can choose to include workers who work less than four hours per week for less than one month when they implement the Directive.

## FOOTNOTES (cont'd):

4 The status of a worker is determined by the European Court of Justice: 3 July 1986, *Deborah Lawrie-Blum v Land Baden-Württemberg*, C-66/85, ECLI:EU:C:1986:284; 14 October 2010, *Union Syndicale Solidaires Isère v Premier ministre and Others*, C-428/09, ECLI:EU:C:2010:612; 9 July 2015, *Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH*, C-229/14, ECLI:EU:C:2015:455; 4 December 2014, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, C-413/13, ECLI:EU:C:2014:2411; and 17 November 2016, *Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH*, C-216/15, ECLI:EU:C:2016:883.

5 “Bogus self-employed” is a term used when a person has declared himself/herself to be self-employed while fulfilling the conditions characteristic of an employment relationship, usually to avoid legal or/and fiscal obligations.

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## Contact us

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