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ESTABLISHING WORK EXPERIENCE UNDER THE BULGARIAN LEGISLATION EXPERIENCIAS LABORALES SEGÚN LA LEGISLACIÓN BÚLGARA

PhD. Vera Lazarova
South-West University "Neofit Rilski", Bulgaria
vera.lubenova@abv.bg

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Abstract

The article explores how to establish work experience under the Bulgarian labor legislation. Its establishment under the prescribed by law order - through its verification with documents issued by the employer or any other body, as well as by the court under the judicial claim proceedings, is essential for the exercise of a number of labor rights of the employee or worker.

Keywords

Labor law – Verification – Bulgarian

Resumen

El artículo explora la forma de establecer la experiencia laboral en la legislación laboral de Bulgaria. Estableciendo su prescrita por la ley a través de documentos de verificación, emitidos por el empleador o cualquier otro organismo, así como por los procesos de litigio en virtud de la corte, es esencial para el ejercicio de una serie de derechos laborales de los empleados.

Palabras Claves

Ley laboral – Verificación – Bulgaria

The lawmaker defines the work experience as a period of time during which the employee or worker has worked under an employment relationship. As a legal category, the work experience is widely applied in the employment legislation. Based on it, as a legal fact, certain rights of the employee or worker occur and change.

The legal significance of the work experience is determined by its establishment under the specified by law order.

The work experience is established in two ways: through its verification with documents issued by the employer or any other body, as well as by the court under the judicial claim proceedings under the Act establishing work experience and length of insurance under court proceedings /AEWELICP/.¹

Pursuant to Art. 12 para. 1 of the Regulation on the service book and work experience /RSBWE/², the work experience under the Labor Code is established through a service book, insurance and craft-school book or alternatively - with a certificate under an approved template issued on the basis of disbursement sheets or batch books, and other documents certifying the work experience in the absence of an employment relationship within the meaning of Art. 354 of the Labor Code.

The service book is the main certifying document under the Bulgarian legislation. It reflects the facts and circumstances related to the employment of the employee or the worker by entries on behalf of the employer or officials in established by law proceedings.³ Art. 6 para. 1 RSBWE obliges the employer upon the termination of the employment relationship to write down in figures and words the work experience acquired by the employee or worker, as it is signed by them and the chief accountant and stamped with their seal.

Regular entries in the service book regarding the work experience of employees or workers acquired until July 1, 1960, although not formed in the manner specified in Art. 6, para. 1 RSBWE based on the argument from Article 12, para. 2 of the same one, are to establish the amount of work experience for that time.

According to Art. 12 para. 1 RSBWE the work experience is established by an insurance book. Typically, work experience is service of the employees or workers under an employment relationship and it is settled with a service book. With the entry into force of the Regulation on service books /"Notices" 26/31. III. 1953/ the service book is the official certifying document for acquired work experience, but only for workers in state enterprises in a broad sense. To the employees hired by private employers there is issued an insurance book, which must be duly certified - with a signature and seal of the enterprise and relevant certifications for entered contributions.

With the entry into force of the Regulation on the service book and work experience from December 1993, the work experience of employees or workers is certified by a service book issued by the established pattern and following certain rules.

¹ Prom. SG. 26, March 29, 2011.

² Adopted by OCM №227 from 23.11.1993, Prom. SG. 102, 3.12.1993, amended and supplemented.

³ See more about the establishment and calculation of work experience, V. Mrachkov - In: B. Mrъчков, K. Средкова, A. Василев. Коментар на Кодекса на труда. Цит. съч., 672-675.

In general it can be said that the insurance book certifies the work experience acquired until 31.12.1999 of set by the law persons. According to the current legislation then, usually work experience is the period during which the person has been in an employment relationship and has been a subject to insurance under the insurance laws or worked as a craftsman, trader or freelancer and entered respective pension insurance.⁴ Therefore, until 2000, work experience was important for the acquisition of rights under labor contracts, and as a precondition for the payment of insurance benefits from the insurance body – for temporary disability benefits or retirement. With the adoption and entry into force since 01.01.2000 of the Social Security Code, it is regulated the concept of the length of insurance as a legal fact, the occurrence of which arises certain rights of the insured persons. According to the current insurance legislation, the length of insurance is the time during which persons have an employment activity and make contributions. Its presence is important for the acquisition and exercise of insurance rights under the insurance legislation.

With the provision of Art. 12 para. 1 RSBWE it is also allowed to prove work experience by a certificate issued on the basis of disbursement sheets or batch books, led as financial and accounting documentation by the employer. Such is the certificate form - UP-3 /30/, which is issued at the request of the employee or worker when in their service book the work experience or details of its duration are not entered or other facts are not reflected properly. The certificate must be signed by the employer and the chief accountant and stamped with the seal of the enterprise. It is necessary to note that with the certificate UP-3 it is proven professional experience acquired up to 2000, which has insurance and legal consequences.⁵ After 01.01.2000, in accordance with art. 40 PLSA, UP-3 certificate is issued pursuant to the disbursement documents to be used as an authentication of the retirement pension rights. Upon termination of the employment relationship, except in cases when work experience is not properly entered into the service book, the employer is also obliged by sponsoring employees or workers to issue a certificate UP-3 when the length of insurance of the person is not equal to the length of insurance as and when there is overtime.⁶

As specified in Art. 354 LC cases it is allowed the opportunity to recognize a certain period of time of work experience, without an employment relationship being present. These are cases made equal as time of work experience. The internship is established by documents from the relevant authorities certifying the time recognized as work experience /argument of Art. 12 para. 1 RSBWE/.

The work experience of art. 354, para. 1, p. 1 LC for the time during which the employee or worker was unemployed due to dismissal, recognized as illegal by the competent authorities /by the employers themselves or by the court/ - from the date of dismissal to their reinstatement to work - is certified with a service book in which the employer complies with the proceedings of Art. 346, para. 1 LC to enter the revocation of the dismissal.

⁴ See more about work experience and its establishment L. Pavlov, F. Bozev - In: Трудовият стаж и неговото установяване. С. Профиздат. 1958.

⁵ With §9 of the TFP of SSC the time recognizing the work experience and length of service upon retirement, performed by 31.12.1999, in accordance with the then provisions, is recognized as length of insurance within the meaning of SSC.

⁶ From 01.01.2005 work experience is the period during which persons worked overtime - art. 38, para. 15 OPLI.

Work experience of the dismissed employee or worker for the time of remaining unemployed due to the detention of the authorities under Art. 354, para. 1, p. 2 LC is certified through a document for the date of dismissal /service book, order of dismissal and others/ as well as the entered into force judgment of acquittal or order of the prosecutor to discontinue the proceedings.

The time during which there was endured punishment “deprivation of liberty”, subsequently repealed accordingly as unfoundedly imposed, is recognized as work experience under art. 354, paragraph 1, p. 3 LC and shall be certified by the Head of the respective place of serving the sentence - prison or reformatory.

For the time of the presentation by the employee or worker to the employer prescription by the health authority for vocational rehabilitation, until providing appropriate work to the reassigned or pregnant female employee or worker, the employment relationship continues to exist, only with the modified content regarding working conditions. And the verification of that time, which is recognized as work experience under art. 354, para. 1, p. 4 LC is actually evident with a service book.

The legislator recognizes as work experience the whole period of staying without a job of the employee or worker due to the illegal keeping of their service book /arg. of Art. 354, para. 1, p. 5 LC/. The illegality of keeping the book and the time of remaining jobless under an employment relationship, as a result of keeping, should be proven by the employee or worker in procedures for examining labor disputes. Thus, only the entered into force decision of the court in favor of the employee or worker certifies the time of remaining unemployed due to keeping the service book.

The work experience of the mother /father/ for the time they have taken care of raising a child until the age of 3 shall be certified by the birth certificate of the child, document of the sequence of the child /birth certificate or other document/ and service book or document which shows that the person during that time has no other recognized work experience. And the adoptive parent should also submit to the authority, which recognizes the rights arising from the work experience and the effective decision of the court for adoption, a declaration of the date on which the adopted child was taken.

Since receiving unemployment benefits are entered into the service or record book, then the authentication of the period of receiving them, which is recognized as work experience within the meaning of Art. 354, para. 1, p. 7 LC, is certified accordingly by them.⁷

The verification of the time during which the employee or worker has been unemployed and has been at schools and doing courses for retraining is evidenced by a document for acquired new skills or retraining. For proof of this service the employee or worker should present a service book or another document to verify that for the claimed period there is no other recognized work experience.

The verification of work experience of persons under Art. 354 LC has an evidentiary value mainly to acquire insurance rights.

⁷ More on the right to unemployment benefits, see N. Lazarova in: Conditions for the Acquisition of the right to compensation under the Bulgarian Legislation and compliance with the terms of Regulation (EC) № 883/2004, “Economic, social and administration to the Knowledge-based organization”, “Nicolae Balcescu” Land Forces Academy, Sibiu, 2016. ISBN 978-973-153-246-2.

In connection with the amendments to the Labor Code in respect of the recognition of work experience of persons having worked in the Member States of the European Community⁸, in the Regulation on the service book and work experience, as amended by 28. 08. 2010 (SG. 73/2010) a new norm is created - art. 13 RSBWE, which defines the method of certifying the acquired work experience to the employer where the employee or worker is in an employment relationship.

From a formal point of view, the legislator determines the acquired work experience to be certified by an act of origination and termination of the relationship or documents issued by the employer or the competent institution under the law of the country in which to reflect circumstances warranting the recognition of work experience. Art. 13, para. 3 RSBWE requires documents to be formed in accordance with the provisions of bilateral or multilateral international treaties to which Bulgaria is a party or by the Rules for Legalization, certification and translation of documents and other papers.⁹ At the written request of the employee or worker, based on the documents submitted, the employer, if the conditions for recognizing the work experience are available under the Labour Code, provides the use of acquired rights.

The work experience, except by verifying it with documents issued by the employer or another authority shall be established in court by the rules of the new Act establishing work experience and length of insurance under court proceedings /AEWELICP/.¹⁰

Through judicial claim proceedings AEWELICP can establish work experience for two periods of time.¹¹ One period of time is after 31.12.1999, pursuant to Art. 1, para. 1, p. 1 of AEWELICP, i.e. for the work experience of the employee or worker within the meaning of Art. 351-355 of the Labor Code, which is important to acquire labor rights. The other period is up to 31.12.1999 with respect to persons who are compulsorily insured for a disability pension due to a general disease, old-age pension or survival pension under Book III of the Labor Code of 1951.

The proceedings under establishing work experience begin with asserting a positively ascertainment claim through a statement of claim¹² by an interested person within the meaning of Art. 2 para. 1 and 2 of AEWELICP against the employer with whom the employee or worker has worked in an employment relationship during the claimed for acquired work experience against the territorial division of NSSI, seat of the employer /arg. of Art. 3, para. 2 and 3 of AEWELICP/. The determination of the defendants - the employer and the relevant division of NSSI is in connection with the legal consequences of the respect or contempt of the statement of claim of the person – plaintiff, as they occur in the legal sphere of the defendants with regard to the rights of the employee or worker and the insured person to them.

⁸ I.e. the work experience gained in another Member State of the European Union, in another country - party to the Agreement on the European Economic Area or Switzerland, and the time of appointment to a position in an institution of the European Union.

⁹ Approved by OCM №184, 1958, prom. SG. 73/1958, amended, No. 103, 1990.

¹⁰ Prom. SG. 26, 29 March 2011, amended.

¹¹ With AEWELICP there is settled a length of insurance as well for the period after 31.12.1999 with respect to persons under Art. 4, para. 1 and 2 SSC, which are compulsorily insured for all insured social risks, including risks concerning general diseases, a consequence of invalidity, old age and death.

¹² With the provision of Art. 4 para. 1 AEWELICP the legislator determines the particulars the statement of claim should comprise.

The District Court, under the permanent address of the plaintiff, who is competent to hear the dispute concerning the establishment of work experience, pronounces the admissibility of the brought claim.¹³ The condition for its admissibility is the existence of a certificate pursuant to Art. 5 AEWELICP attached to the statement of claim that the documents containing data for the claimed work experience are lost or destroyed.

The work experience affects the emergence of the right to use a paid annual leave, determine the size and receive additional salaries, benefits, etc. Establishing it under the prescribed by law order is essential for the exercise of a number of labor rights of the employee or worker.

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¹³ See Ив. Стайков - Обща характеристика на съдебното производство за установяване на трудов и/или осигурителен стаж. – сп. Норма, 2012, бр. 5, с. 5-18.