

LEGAL UPDATE

Council of State advises on Bill Vbar and Bill More Security for Flex Workers

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Developments in the field of tackling false self-employment follow each other in rapid succession. [Last week](#) we wrote about the review framework recently published by the Tax Authorities for lifting the enforcement moratorium and the contents of the amended Vbar bill. Meanwhile, the State Council has advised on the substance of that amended bill. The Council of State has also advised on the Bill on Greater Security for Flex Workers. Both opinions were [published](#) Monday, November 11, 2024.

The Council of State is critical of the Vbar bill and has several comments. The advice is to take those comments into account before submitting the proposal to the House of Representatives. The Council of State notes that the proposed package of measures is expected to contribute little to limiting false self-employment and that the removal of the enforcement moratorium seems more effective. There are several reasons for this.

Elaboration of the authority criterion

According to the Council of State, the proposed elaboration of the authority criterion constitutes a codification of existing case law, whereby the facts and circumstances mentioned therein are grouped into two main elements. In addition, the Council of State wonders to what extent the proposed framework will actually simplify the assessment. Although the main elements and indications make clear what is important in assessing the employment relationship, the facts and circumstances of the case ultimately remain decisive. This is especially true now that the bill does not clearly rank the weight given to a particular element.

Legal presumption

The Council of State is more positive about the legal presumption that at an hourly rate of €33 or less it is presumed that someone is working based on an employment contract. The Council of State believes that the legal presumption can lead to limiting false self-employment. Nevertheless, the measure is expected to be of little significance, because the initiation of legal proceedings will be too big for many workers. In addition, the Council of State mentions as a point of attention that the Tax Authorities cannot independently assess the legal presumption when assessing the employment relationship. This means that fiscal and civil judgments may be reached differently.

Pension contributions

Finally, the Council of State points out the drastic consequences including the retroactive withholding of pension premiums when the employment relationship is still classified as an employment contract. This is due to the fact that the legislator has seen no reason to make a provision to limit the retroactive withholding of pension premiums (as the Tax Authorities have announced, for example, when it comes to withholding payroll tax).

Bill More Security for Flex Workers

The Council of State is also critical of the Bill on Greater Security for Flex Workers. According to the Council of State, this bill will have only a limited effect. The Council of State finds the added value of the new bandwidth contract, in which the difference between the minimum and maximum number of hours is limited to 30 percent, still unclear. The Council of State also questions whether a ban on on-call workers will be effective in practice.

How to proceed?

The Council of State has advised the legislature to first adjust both bills on the points mentioned. After that, the legislator can submit the proposals to the House of Representatives.

Do you have questions about the use of freelancers and/or on-call workers? If so, please contact one of our specialists from the Labor & Pensions team.

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