

Tax & Legal Weekly Alert

14 – 18 November 2016

In this issue:

The High Court of Cassation and Justice ruled that a person performing work in favor and under the supervision of another party in the absence of a written individual employment agreement may file a declaratory judgment action in view of ascertaining the existence of employment relations and the legal effects thereof

According to a statement published on the Supreme Court's website on 7 November 2016, the High Court of Cassation and Justice (the Panel for ruling on legal matters) has ruled that the courts of law can ascertain both the existence of employment relations and the legal effects thereof, including after the termination of the employment relations.



The High Court of Cassation and Justice ruled that a person performing work in favor and under the supervision of another party in the absence of a written individual employment agreement may file a declaratory judgment action in view of ascertaining the existence of employment relations and the legal effects thereof

Starting with the publication of Decision no. 37/2016 of the High Court of Cassation and Justice in the Official Gazette, a person who performs work in favor and under the supervision of another party in the absence of a written individual employment agreement will be able to file a declaratory judgment action in view of ascertaining the existence of the employment relation, including after the termination of the employment relations;

Implications of Decision no. 37/2016 of the High Court of Cassation and Justice

- Given that there is no statute of limitation for filing declaratory judgment actions, persons who perform work in favor and under the supervision of another party in the absence of a written individual employment agreement will be able to claim before courts of law to ascertain the existence of the individual employment agreement at any time;
- If the court of law ascertains the existence of an employment relationship, the employer may be obliged to retroactively pay the social contributions and other taxes, with penalties, and grant employees all rights provided under the Labor Code; however, when filling these claims the employees will have to observe the applicable statutes of limitation.

The Decision of the High Court of Cassation and Justice will certainly have a major impact in practice; however, it will also create practical problems, given on one hand the status of limitation applicable to employees' requests for claiming their rights and, on the other hand the limitations in evidences admissible for proving the existence of individual employment agreements.

The Decision will become binding following its publication in the Official Gazette.

For further questions regarding the aspects mentioned in this alert, please contact us.

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