

## Platis - Anastassiadis & Associates

The associate law firm of EY Greece

### Instructions for the application of the Digital Work Card in Industry and Retail from 01.07.2024

On June 21, 2024, the Ministry of Labor and Social Security published Interpretive Circular No. 37271/21.06.2024 (the Circular), providing instructions for the implementation of the digital work card. This update accompanies the system's extension, effective from July 1, 2024, to the Industry and Retail Trade sectors.

As outlined in the Circular, until the digital card system is fully implemented across all employers nationwide, the measurement of working hours using the digital card will only apply to periods when employees of participating companies are physically present at their

workplace facilities. Consequently, the extension of the digital work card to employees working under a hybrid model remains in the planning stages at the Ministry of Labor.

Brief overall presentation of Business Activity Codes who are subject to the digital work card system:

Business Activity	Business Activity Code	Go live date
Banks		01.07.2022
Supermarkets with more than 250 employees	4711	01.07.2022
Security	801 & 802	16.02.2023
Private insurance	651	16.02.2023
Hellenic Railways Organization S.A/ERGA OSE (Projects of Hellenic Railways)/Athens Urban Rail Transport/PUBLIC TRANSPORTS S.A, Athens Urban Transport Organization, Transport Authority of Thessaloniki S.A, Organization of Urban Transportation of Thessaloniki, Elliniko Metro - Athens Metro, Ktiriakes Ypodomes S.A, EGNATIA MOTORWAY OBSERVATORY, Water Supply and sewerage company, Ελληνικά Ταχυδρομεία, Hellenic Train, Hellenic Company for rolling stock maintenance S.A.		22.03.2023
Industry	10 to & 33 (excluded 19, 3011, 3012)	01.01.2024 (with activation of fines as of 01.07.2024)
Retail	47	01.01.2024 (with activation of fines as of 01.07.2024)

#### A. Clarifications regarding sectors of the economy that are excluded from the application of the digital work card.

- ▶ When the main Business Activity Code of an employer in TAXIS is one of those included in the digital work card system, but there are specific branches belonging to other sectors of economic activity (e.g., Hotels, Catering, Gyms) that have not yet been integrated into the digital card system and will be integrated in a subsequent phase due to their specific characteristics, there is no obligation to implement the digital card mechanism for the branch at this stage. This position modifies the previous ERGANI directives (Guide 01.01.2024 - Question 4 of Annex 12), which stipulated that since the main employer's Business Activity Code in TAXIS belongs to the branches of the digital work card, all employees of the employer in question, including those employed in branches irrespectively of their Business Activity Code, are included in the Work Card Mechanism.
- ▶ In cases where the main employer's Business Activity Code in TAXIS is subject to the digital work card mechanism and multiple activities are performed at the same location, some of which have not yet been integrated into the digital work card system (e.g., a restaurant), there is no obligation to apply the mechanism for all employees of the company. This is due to the significant difficulty, during labor audits, of distinguishing between the different activities.
- ▶ An exception to the application of the digital work card system for all employees exists when an employer joins the digital work card mechanism based on their main Business Activity Code in TAXIS,

but this code does not generate any economic activity (i.e., it is zero). This can be proven by the E3 form. If the secondary Business Activity Code, which is the dominant financial activity, is not an incorporated (to the digital working card system) Business Activity Code, the digital work card system does not need to be applied.

- ▶ If the main Business Activity Code of the employer in TAXIS does not belong to the sectors that have been integrated into the digital work card system, the entire business unit is not subject to the digital work card mechanism, even if the branches include Business Activity codes that, according to the relevant ministerial decisions, are included in the digital work card system.

#### B. Discrepancies between the declared working hours in the Digital Work Time Organization and the «click-ins» of the Digital Work Card.

The click-in of the digital work card must reflect the actual start or end of work at the company's facilities. Otherwise, a fine of €10,500 per violation is imposed.

Discrepancies between the digitally declared working hours and the click-ins of the digital work card, without any modification of the working schedule, are considered acceptable when justified by the nature of the work or the method of work organization. Discrepancies between the digitally declared work schedule and the logging of the digital work card, indicating overtime hours, are subject to inspection by the Labor Inspectorate to ensure compliance with all procedures mandated by labor law.

### **C. The number of click-ins of the employees' digital work card per day and maximum number of missing digital work card markings.**

The number of click-ins of the employee's digital work card per day should be an even number.

- i. Zero (0) click-ins, when the employee works with hybrid (teleworking) system or does not have any physical presence at the company's premises on a certain day for reasons justified by the nature of his work (e.g. traveling salesman, driver, etc.) or the specific situation (e.g. strike, not showing up to work, etc.).
- ii. Two (2) click-ins, when the employee works continuously in the building facilities of the business, in which case he must mark his card upon first entering the business and upon the last exit from it.
- iii. Four (4) click-ins, in the event that the employee works on a split shift basis at the company's facilities. In this case, the employee must click-in upon their first entry and final exit for both the first and second segments of their shift.

It is explicitly stated that any intermediate click-ins are not taken into consideration, and that the marking of the digital work card, which must align with the digital declaration of working hours, is an obligation of the employee that cannot be substituted by the employer (e.g., filling in missing "click-ins" by the employer).

It is specified that due to negligence, it is possible that an employee's card may not be clicked-in upon the start or end of their work. However, it stipulates (for the first time) that within the framework of good faith, up to 3 single missed click-ins per month per employee may be considered acceptable. In such cases, the relevant determination by the Labor Inspection will result in a recommendation/warning rather than a fine being imposed. The Ministry of Labor reaffirms its established position that repeated failure to submit start and end declarations in the ERGANI system constitutes a reason for inspection by the Labor Inspection (risk analysis).

Lastly, justified exemptions from clicking-in (using) the digital work card include employees in the following categories: a) those engaged in teleworking, b) individuals without a fixed workplace, and c) managerial personnel.

### **D. Employment in branches and clicking-in of the digital card.**

A clarification is very crucial regarding employees working across various branches. The obligation to click-in using the digital card applies even when an employee starts their work at branch A of the company and completes it at branch B of the same company.

In such cases, the employee must necessarily have two card click-ins within the day. The first click-in (entry

click) should be at branch A, and the second click-in (exit click) should be at branch B. The commencement of work with physical presence at the company's premises will be considered as the initial card click-in at branch A, and the end of work with physical presence at the company's premises will be considered as the final card click-in at branch B.

### **E. The "Flexible Attendance" and click-in of the digital card.**

The Ministry of Labor's established position is confirmed that the condition of flexible attendance for employees (those under the digital work card system), with a maximum of 120 minutes per day, applies after and not before the declared start of the working hours. In other words, flexibility is allowed within X minutes (from 0 to 120 minutes maximum) from the declared start time onwards.

### **F. Introduction of retrospective system for registering schedule changes, organization of working time and overtime.**

Starting from July 1, 2024, Article 22 of Law 5053/2023 activates the option for businesses enrolled in the digital work card mechanism, if they choose:

- i. not to pre-register changes or modifications to working hours, organization of working time, or overtime work before their actual implementation.
- ii. to declare, by the last day of the current calendar month, in the "Digital Declaration for choice of pre-notification or retrospective system for registering changes in working hours, organization of working time, and overtime," that for the next period, which cannot be less than one calendar month, they will register changes in working hours, organization of working time, and overtime retrospectively within the same month.
- iii. to register the relevant changes by the end of the next calendar month from the month of their implementation.

### **Z. Regarding the preparation for starting or leaving work and the digital work card.**

The presence of employees in shared spaces of the company, such as changing rooms, cafeterias, gyms, and recreational rooms, before the start or after the end of their working hours, is a matter concerning the internal organization and operation of each respective company and is legally permissible. However, during inspections by the Labor Inspection, the burden of proof that these employees are present in the company without working falls on the employer.

Specifically for the industrial sector, it is recognized that this sector may require time for employee preparation before starting work and after finishing work.



To the extent applicable, this time, which cannot exceed 30 minutes before the start and 30 minutes after the end of working hours (unless longer preparation time justified by objective reasons and proven during inspection), does not constitute working time. Therefore, the digital card click-in for this category of employees should occur:

- i. At the start of work, after the preparation time for commencing service, and
- ii. At the end of the work, before the start of the preparation time for leaving.

Although not explicitly stated, we understand that this flexibility applies exclusively to production workers and not to office workers.

#### **H. Employees subject to an employee lending agreement and Contractor Workers.**

The constant position of the Ministry of Labor is reiterated that in cases of work lending, the indirect employer is the one who is burdened with the obligation to implement the digital work card system, in the event that his business is included, based on the main Business Activity Code in TAXIS, in the digital job card system. The same applies when the indirect employer employs workers through a Temporary Employment Agency (E.P.A.).

On the contrary, as long as the indirect employer is a company whose main Business Activity Code is not included in those liable to comply with the digital work card mechanism, its employees, as well as its lent personnel, do not have the obligation to have and activate a digital card of work even if the latter (i.e. the employees who have been allocated through E.P.A.) are employees of a company - an employer that has joined the mechanism of the digital work card.

Finally, a special analysis is carried out for employees who are employed through contractors. The nature of the work to be performed plays a decisive role in determining the place of employment. Particularly:

- i. When the contractor's main Business Activity Code in TAXIS corresponds to one of those covered by the digital work card system, and the work required to complete the project is provided either by the contractor themselves or by third parties hired by them, within the contractor's premises, then it is clear that the contractor's employees are obligated to use the digital work card. The same applies when the contractor performs work necessary to complete a project undertaken at another employer's premises, where the place of work is leased or subcontracted to the contractor exclusively for the project's completion.

- ii. Conversely, if the work required to execute the project is carried out by the contractor's employees at another employer's premises without any lease or subcontracting arrangement, there is no requirement for the contractor's employees to use the digital work card at the premises of the other employer, even if the contractor is enrolled in the digital work card system.
- iii. When the contractor has not as a main Business Activity Code in TAXIS one of the above-mentioned Codes subject to the digital work card (page 1) there is no requirement for their employees to use the digital work card, even if they are working within the premises of another employer who is enrolled in the digital work card system.

It is worth mentioning that the Ministry of Labor pointed out through an announcement dated 21.06.2024 that the employment on the 6<sup>th</sup> day for the enterprises of article 25 and 26 of Law 5053/2023 (enterprises which by their nature are of continuous operation and in those already operating on a 24-hour basis 5 or 6 days a week) is an exceptional condition that covers emergency needs. It also clarified its position that the 6<sup>th</sup> day may coincide with a Sunday or public holiday, in which case the daily wage is increased by 115% (40% of the 6<sup>th</sup> day's increase plus 75% for employment on a Sunday/holiday) - which may potentially exceed 115% in case of night work for which an additional 25% surcharge applies.

The clarifications provided both by the announcement and the Circular, especially regarding the cases of companies that are excluded from the application of the digital work card, are of particular importance. Additional clarifications are expected regarding the other new declaration obligations of the P.S. ERGANI that were entered with MD 113169/28.12.2023 and which will be implemented at a later time.

## About Platis - Anastassiadis & Associates

Platis - Anastassiadis & Associates is part of the EY Law network operating in 90 countries globally and is comprised of 3,500+ people.

We are an independent law office with a core team of 41 lawyers. Our office provides high quality legal services across the full range of commercial and financial transactions.

Especially in our geographical area, we have established an ongoing cooperation with the respective law firms which are associated with EY, in order to offer seamless and consistent regional services to our clients that have cross country operations.

Our experience allows us to better understand our clients' needs and offer them integrated multidisciplinary solutions in the fields of accounting, tax and financial advisory services. Platis - Anastassiadis & Associates law office is solution focused. We work closely with our clients to seek innovative and practical ways of dealing with their issues. Our priority is to help our clients meet their business objectives. Our expertise, commitment and enthusiasm has resulted in the build up of a client base which includes local and international listed, state and private sector companies and financial institutions.

For more information on **labor law** issues, please contact:

### **Maria Rigaki**

Partner

Tel.: +30 210 2886 528

maria.rigaki@gr.ey.com

### **Gelly Patsialou**

Senior Associate

Tel.: +30 210 2886 644

gelly.patsialou@gr.ey.com

at the

### **Platis - Anastassiadis & Associates Law Partnership**

Tel.: +30 210 2886 512

Email: platisanastassiadis@gr.ey.com

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EY Greece



eygreece



@EY\_Greece



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