

Summary of the Romanian Labour Law

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1. General Comments

By way of background, the Romanian Labour Code (the “Labour Code”) governs general employment relationships; although the Labour Code is usually modified every year by the publication of the government approved National Collective Labour Agreement in the Official Gazette. The National Collective Labour Agreement may also be modified by collective labour agreements for each industrial activity in Romania.

The Labour Inspectorate is the governmental body within the Ministry of Labour and Social Protection and is the authority which supervises labour relationships and the compliance of the enacted labour safety rules. The Labour Inspectorate has territorial branches (Territorial Labour Inspectorates) that are responsible for the above-mentioned labour duties.

Individual labour contracts concluded with privately owned companies should be registered within twenty (20) days from date of execution with the Territorial Inspectorates of Labour. Any document regarding the execution, amendment, and termination of an individual labour contract shall be registered with the Territorial Inspectorates of Labour within five (5) days from the conclusion of such document, and the employer shall report on a monthly basis, on the 15th day of the following month, the documents evidencing payments for salaries, social security, supplementary pension, and the unemployment contribution.

2. Individual Labour Contract

The Labour Code provides that individual labour contracts (hereinafter “ILC”) shall be in a written form and shall include at minimum the clauses provided for by the sample ILC. As a matter of practice, the inspectors from the Labour Inspectorate mainly accept employment agreements presented in the form of the sample contract. However, this practice is not compliant with the legal provisions, since the sample ILC provides for the possibility to add other clauses, which are not covered in the sample.

(a) Duration of the Employment Contract

ILC may be established for either an undetermined or a fixed duration. The usual form of contract is one of an undetermined period of time. ILC may be concluded for a fixed period of time if done: (i) for replacement of an employee on a temporary leave of absence who the employer is required to retain; or (ii) for activities of a temporary nature; (iii) the temporary growth of the employer's activity; (iv) if the contract is concluded on the basis of certain legal provisions issued with the purpose of temporarily favouring certain categories of unemployed persons; the hiring of a person which meets all retiring conditions within 5 years from the date she was hired; occupying eligible functions within trade union organizations, or non-governmental organizations, on the period of the mandate; hiring retired persons whom, under the conditions provided by the law, may cumulate the pension with the salary; other cases expressly provided by special laws. ILC for a fixed duration might not be concluded for a period exceeding 12 months.

(b) Probation Period

The potential employee is subject to written and/or oral examination, a practical testing of their relevant skills and/or a probation period of time, if so desired by the employer. The duration of the probation period is a maximum of thirty (30) days for operational positions and a maximum of ninety (90) days for management positions. The graduates of education institutions shall be employed, when debuting in their profession, based on a probation period of maximum 6 months.

3. Employee Protection

The employer may be subject to dissolution upon request by the general divisions of labour and social security if the employer:

- a. Repeatedly hires persons without concluding an individual employment contract;
- b. Refuses to allow access and/or to present the necessary documents to the labour inspectorate officers; and/or
- c. Does not maintain the register of civil conventions in compliance with the law.

In case the shares of a company are transferred, the new owner is bound by the existing collective labour contract and individual employment agreements as well as civil conventions for their entire duration. When such agreements are terminated, the new owner is required to negotiate new ones.

4. Working Hours

According to the legal provisions, the working week has five days (Monday to Friday). The regular working time is 8 hours per day or an average of 40 hours per week. The distribution of work hours during the week is generally uniform, 8 hours workdays for 5 days, with two rest days. Depending on the specific characteristics of the unit or the performed work, it can also be opted for a variable distribution of work hours, by complying with the normal 40 hours work per week.

The maximum legal work hours cannot exceed 48 hours work per week, including overtime. When work is performed in shifts, the work hours can be extended over 8 hours workdays and 48 hours work per week, provided that the average work hours, for maximum consecutive 3 months, does not exceed 8 hours workdays or 48 hours work per week.

A person can also be employed on part time basis, with 6, 4, or 2 hours per day. In such cases, the employee will be rewarded proportionally with the time worked. Employees working on a part-time basis can be employed full time, upon request, in case there are vacant positions and in case they fulfil the legal conditions for applying for those specific positions.

The beginning and the end of the official work time will be established through the company's internal rules.

Work carried out between the hours of 10 p.m. and 6 a.m. is considered night work. For night work, the employee may work one hour less than those worked during the day, with no corresponding reduction in wages.

5. Overtime

The time spent after the regular established work time represents overtime. The employees cannot be requested to do overtime, without their consent (except during events of force majeure).

As a general rule, overtime should be compensated with leisure time given in the following 30 days. If due to the employer's activity, the employee cannot get leisure time, the overtime is compensated with money at an hourly rate increased with at least 75% of the based salary.

In case of part-time employees the work performed outside the normal work schedule (6,4 or 2 hours) or during the holiday or the weekend is deemed overtime and is paid according to the same rules, as mentioned above.

6. Leisure Time

Employees are entitled to a rest period of at least twelve (12) consecutive hours between the end of work on one day and commencement of the next day's work (24 hours). Employees are entitled to two (2) statutory rest days a week, normally Saturday and Sunday. In case of a shift of 12 working hours, the employee is entitled to 24 hours rest time.

7. Annual Leave

Employees have the right to annual paid leave of at least 21 working days. The employees who work in difficult, dangerous or damaging conditions, blind people, other disabled persons and young people under 18 benefit of additional holiday of minimum 3 business days. Employees have the right to paid days off in cases of family special events, such as a marriage (5 days), marriage of a child (2 days), childbirth in case of the father (2 days), death of a relative (3 days), secondment in another town (5 days). Employees may not waive the right to paid leave.

8. Vocational trainings

The employers have the obligations, on its own expenses, to assure to their employees the participation to vocational trainings at least once every 2 years if they have at least 21 employees and at least once every 3 years, if it has less than 21 employees.

The actual vocational training method, the rights and obligations of the parties, the length of the vocational training and any other issues related to the vocational training, including the contractual obligations of the employee in relation to the employer bearing the vocational training expenses shall be agreed upon by the parties and shall be included in addenda to ILC.

9. Collective Labour Agreement

A company with more than twenty-one employees is required to commence negotiations upon the request of the employees operating at such company for the purpose of concluding a collective employment agreement.

There is no obligation for the parties to conclude a collective employment agreement, but only an obligation to negotiate for the purposes of concluding such agreement. Negotiations cannot last more than sixty (60) days. A collective employment agreement must be concluded for a minimum period of twelve (12) months.

10. Termination of an ILC

(a) Termination by mutual agreement and termination by dismissal

Thus, in the case of a termination of an ILC by mutual agreement of the employer and the employee, an addendum is to be executed between the parties with respect to the ILC termination and the date agreed upon when such termination occurs.

According to the Labour Code, dismissal means the termination of the ILC by initiative of the employer.

Labour Code stipulates the cases when the dismissal of employees cannot be ordered:

- a. During temporary work inability, attested by medical certificate in compliance with the law;
- b. During quarantine leave;
- c. During pregnancy period of the salaried woman, as long as the employer acknowledged this fact prior to the issuance of the dismissal decision;
- d. During maternity leave;
- e. During child care leave until the child reaches the age of 2 or, in case of a disabled child, until the child reaches the age of 3;
- f. During child care leave in case of an ill child, until he reaches the age of 7 or, in case of a disabled child, for intermediary affections, until the child reaches the age of 18;
- g. During military service;
- h. During the performance of an eligible position in a trade union organisation, unless the dismissal is order for a serious disciplinary breach or for recurrent disciplinary breaches, performed by the respective employee; and/or
- i. During annual leave.

(b) Dismissal on grounds independent of the employee's person

Labour Code stipulates that the dismissal due to reasons which are not the liability of the employee represents the termination of the ILC for objective reasons.

The dismissals due to reasons, which are not the liability of the employee, can be individual or collective.

The individual dismissal takes place as a consequence of the work place dissolution; in order to be considered lawful, it is required that such dissolution to be effective and to have a real and serious cause.

Collective dismissals mean the dismissals, within 30 calendar days of a number of:

- a. Minimum 10 employees, if the employer who dismisses the employee has more than 20 employees, but less than 100 employees;
- b. Minimum 10% of the employees, if the employer who dismisses the employees has minimum 100 employees, but less than 300 employees; and
- c. Minimum 30 employees, if the employer who dismisses the employees has minimum 300 employees.

The employees thus dismissed, either on individual or collective bases, benefit of active measures for fighting unemployment and can benefit of compensations in compliance with the conditions provided for by the law and the applicable collective bargaining agreement.

(c) Dismissal on grounds related to the employee

The Labour Code provides several circumstances where the employer is entitled to proceed with the employee's dismissal for reasons related to the employee, as follows:

- a. Dismissal for disciplinary offence;
- b. Dismissal when the employee is taken into preventive custody for more than 30 days, under the terms of the Code of Criminal Procedure;
- c. When, by decision of the competent expert medical report bodies, a physical and/or mental inability of the employee is assessed, not allowing him/her to fulfil the duties corresponding to the position owned;

- d. When the employee is not professionally fit to the workplace where he/she is employed;
- e. When the employee fulfils the standard age and period of contribution conditions and has not requested retirement, under the terms of the law.

Please note that in the three mentioned cases a dismissal decision might be legally issued only following a previous procedure has been accomplished.

As so, a dismissal for serious breach or a recurrent breach of the work discipline rules can be ordered only after the compliance by the employer with the prior disciplinary research procedure and within the terms provided for by the Labour Code. The prior research procedure is also compulsory if the employee is not suitable from a professional point of view.

11. Labour Disputes

Law defines a labour dispute as a conflict between the employer and the employees arising from the professional, social or economical interests of the employees, or rights resulting from the employment contract.

In the case of a labour dispute, the parties may agree to mediation or arbitration proceedings. In case no amicable solution is reached, any dispute shall be solved out by the competent court of law.

12. Trade Unions

All employees, except managers, persons holding positions of authority in the state administrative system, or members of the judiciary or armed forces, have the right to establish trade unions and are guaranteed the freedom of association and organization.

Trade Unions must be independent, apolitical organizations, formed for the purpose of protecting and promoting the interests and the rights of their members. Trade union funds used to achieve their purposes are derived from membership fees, entrance fees, and the proceeds from cultural and sporting events.

In those enterprises where the number of employees is more than 20 and no employee is member of a union, the employees' might choose between them a number of representatives which shall promote their interests against the respective employer.

13. Employees' protection in case of the transfer of undertaking (TUPE)

The TUPE is regulated by the Labour Code as well as by the Law. No 67/2006 regarding the employees' protection in case of the transfer of undertaking.

The provisions of the mentioned legal regulations need to be observed:

- a. When one employer proposes to transfer his business or part of it to another employer, then both employers should inform and consult with the relevant trade union or employee representatives about the proposed transfer;
- b. If and when the transfer of the business takes place, then the contracts of employment of the employees concerned will be automatically transferred from one employer to the other; and
- c. If an employee is dismissed and the reason or principal reason for that dismissal is the transfer or a reason connected to the transfer, the dismissal is automatically unfair;

The information and consultation requirements are that the employer of employees affected by the transfer, whether the vendor or the purchaser, must inform all the appropriate representatives about:

- ✓ the fact that a relevant transfer is to take place, when it is to take place and the reasons for it;
- ✓ the legal, economic and social implications of the transfer for affected employees;
- ✓ whether it envisages taking any measures in relation to those employees and, if so, what measures;
- ✓ if the employer is the vendor, the measures which the purchaser envisages it will take in relation to those employees (or if not, that fact).

If either the transferor or the transferee envisages that it will be "taking measures" in relation to affected employees, the duty to consult arises.

14. Sanctions

The Labour Code provides several criminal and administrative sanctions for the employers whenever different rights of the employees are not recognized or granted or in case some legal provisions are breached.

For instance, is deemed criminal act, the failure to enforce a final judgment regarding the payment of the wages within 15 days from the date of the enforcement request submitted to the employer by the interested party and shall be punished with imprisonment between 3 and 6 months or a fine.

The non-enforcement of a final judgment regarding the reinstatement of an employee is also regarded as a criminal offence and punishable with a imprisonment between 6 months to 1 year or a fine.

The administrative fines are mainly in relation to the breach by the employers of the ILCs, the labour legislations and/or the applicable collective bargaining agreements.

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For any questions, please do not hesitate to contact us (above see our contact details).