



A GUIDE OF THE ROMANIAN EMPLOYMENT LAW

1. OVERVIEW

1.1. Legal system

In Romania, the employment relations are governed by Labour Code – the Law 53 / 2003 as amended, a law that represents the common law in this field and that was modified during the time in order to be harmonized with the E.U. legislation.

Also, the labour relations in Romania are regulated by several laws which with the EU employment legislation are meant to regulate the particular legal situations and establishing rights and obligations of the parties involved in the labour relations

Last but not least, are to be mentioned the collective labour contracts which by their nature and by the possibility of the employees / the representatives of employees / trade unions to negotiate with the employer can establish additional and specific rights for the employees or solutions to avoid or limit the labour conflicts that may occur during the employment relations

1.2. Trade unions

All the rules, procedures, rights and obligations of the union organisations, a generic name for the trade unions, union federation and union confederation, are set up by the social dialogue law no. 62 / 2011.

The establishment of the union organisations represented by a special mandatory for such purpose authorised will fill a request of authorisation to the court in whose jurisdictions the organisation has its headquarters.

In order to achieve the purpose for which they are established, trade unions have the right to use specific means such as negotiations to settle disputes through conciliation, mediation, arbitration, picket protest, march, rally and demonstration or strike, as provided by law.

The trade unions will be asked, upon law, when employers' decisions are to affect substantially the right of its employees, such as collective redundancies.

Also, in order to protect the rights and promote the professional, economic and social members rights, trade unions receive from employers or their organizations information necessary to negotiate collective agreements.

The employer may ask the union representative at the unit (company) level to participate in the board of directors or other governing body similar to it, to discuss professional, economic and social issues.

Last but not least, national trade union confederations may address the competent public authorities the legislative proposals in the areas of trade union interest.



1.3. Employment contract in general

As a rule, under to Romanian legislation, the employment contract is concluded for an indefinite period of time, in written form, on the basis of parties' consent that have to observe the draft of the employment contract settled up by Order issued by Minister of Labour, Family and Social Protection.

As an exception, in the cases expressly stipulated by law, the employment contract can be concluded for a definite period of time.

The employment contract has to be registered by the employer in the general registry for evidence of the employees *no later than the business day prior the day the employee begins his work*.

Any amendment that changes the essential items of the employment contract will be made through an additional act that has to be concluded within 20 working days from the moment the change occurs.

The registration of such amendment will be made in the general registry for evidence of the employees no later than the business day prior to expiration of the 20 working days mentioned above.

2. HOW TO ENTER INTO AN EMPLOYMENT RELATION

As a general rule, a future employee, irrespective of his position (of management or executive) has the right to be informed regarding: identity of the parties; works place or, if the place is not fixe, the possibility that employee to work in different places; headquarters or, where appropriate, the address of employer; occupation according to Occupations Classification in Romania; job description, specifying job duties; criteria for assessing the professional activities of employee applicable at the employer; job-specific risks; the date on which the contract enters into force; for a definite term employment contract or for a temporary employment contract, their duration; duration of holiday; the conditions to give notice by the parties and their duration; base salary and other wages and salary payment date; duration of a normal frame of work, expressed in hours per day, hours per week; the collective labour agreements governing the working conditions of the employee; the duration of probation period.

Irrespective of the position held, the employee and the employer, at the conclusion of the agreement, have to observe the draft of the employment contract settled up by Order issued by Minister of Labour, Family and Social Protection and its mandatory clauses, having also the possibility to include additional clauses provided that such clauses do not contravene the labour legislation.

2.1. Management positions

However, whether the management contract and the contract for regular employees have the same basis (the employment contract settled up by Order issued by Minister of Labour, Family and Social Protection) it is generally known that depending on the position the candidate applies, there are several differences not only in the recruitment process, but also to the additional clauses of the contract of employment that are negotiated before the conclusion of the agreement.

An important difference between a management position and an executive one is the notice period – the person that holds a management position, in case of resignations, has to give the employer a 45 working days notice.



2.2. Executive positions

The regular employees are usually the employees occupying executive positions in a company, but at the conclusion of the employment contract they have same rights as the employees who may occupy positions of management, reason why the clauses of their employment agreement must comply with de minimum clauses of the draft settled up by Order issued by Minister of Labour, Family and Social Protection.

The employee with an executive position, unlike a person occupying a management position, in case of resignation has to give the employer a 20 working days notice.

3. TERMINATION

According to Romanian Labour Code, the termination of the employment contract occurs:

- *de jure*;
- by the consent of the parties;
- by unilateral decision of one of the parties (redundancy, dismissal, resignation).

For each of these situations are limited causes of termination provided by law and rules to be observed both employee and employer.

3.1. With notice

The notice is the rule in case of termination of the employment contract by unilateral decision of one of the parties.

However, the employee may resign without notice in two situations:

- if the employer fails to fulfil its obligations under the employment contract or,
- in case the employee is in probation period, he may resign without a notice, a written informing being sufficient, even groundless.

Also, the employer can dismiss without notice an employee during the probation period or at the end of it.

3.1.1. Redundancy

Redundancy occurs if the employer dismisses:

- at least 10 employees if the employer has more than 20 and less than 100 employees;
- at least 10% of employees number if the employer has at least 100 but less than 300 employees;
- at least 30 employees if the employer has at least 300 employees.

It is very important to know that in establishing the actual number of collective dismissed employees count the employees who have ceased employment contract at the initiative of the employer of one or more reasons not related to the employee provided there are at least five contracts terminated so.

3.1.2. Dismissal for personal reasons

As the resignation is the unilateral act of the employee, the dismissal is the termination of the employment contract at the employer's initiative. The dismissal may be ordered for reasons related or not related to the



employee. This classification is quite important given the obligations of the employer are different in both cases.

According to Romanian legislation, the employer may dismiss the employee for reasons related to him in the following situations:

- As a disciplinary sanction, if the employee has committed a serious violation or repeated violations of the rules provided by work discipline or by employment contract, collective labour agreement or, in case he did not consider the applicable rule of procedure. This type of dismissal may be ordered by the employer only after the completion of a prior disciplinary research, observing the terms established by Labour Code.
- In case the employee is being taken into custody for a period exceeding 30 days in accordance with the Criminal Procedure Code;
- When, by decision of the competent medical expertise, the employee is found in a physical incapacity and / or mental harm, which does not allow him to fulfil its work duties. In this case, the fired employee is entitled to receive compensations, as provided in the applicable collective labour agreement or employment contract, as appropriate.
- If the employee does not meet the professional requirements. In such case, the dismissal shall be ordered after a failed assessment procedure established by the applicable collective labour agreement or by internal regulation.

In case of dismissal for the last reasons mentioned above, the employer has the obligation to propose, if possible, other vacant jobs compatible to the employee's professional expertise or capacity, upon the procedure set up by law.

Anyway, the dismissal shall be issued in written, shall be grounded in fact and under law under the penalty of absolute nullity, and shall specify the term of appeal and the competent court to solve it.

3.2. Dismissal

The dismissal, as a cause of termination by employer's unilateral decision, can be individual or collective (see chapter "Redundancy" above). However the dismissal, individual or collective, the employer must comply with the procedure prescribed by law and the rights of employees during such procedure.

As regards the individual dismissal it is caused by cancelling a job, a reason not related to the employee's person, but to the employer's activity and its management.

Given the limitations and restrictions stipulated by employment legislation in Romania in case of dismissal, the job cancellation has to be real, effective and serious.

Also, it is very important to mention here that, some categories of employees receive special protection in case of dismissal; thereby an employee may not be dismissed:

- during his temporary labour disability, as established by a medical certificate;
- during the quarantine leave;
- when the employed woman is pregnant, if the employer became acquainted with this fact before the issuance of such dismissal decision during maternity leave;
- during parental leave;



- during one's leave for looking after a sick child aged up 7 years or, in case of a disabled child, for inter-current diseases, until he / she turns 18 years of age;
- during the exercise of a function in an eligible trade union body, unless the dismissal is ordered for a serious disciplinary offense or repeated misbehaviour, committed by that employee;
- during the annual leave.

Employees dismissed for reasons not related to them, benefit from active measures to combat unemployment and can receive a financial compensation as provided by law, applicable collective labor contract or according to the employment contract.

3.3. Unlawful dismissal

Any dismissal ordered in violation of the procedure prescribed by law is null and void. In case of dispute resolutions the employer may not invoke the court for other reasons of fact or the law than those specified in the dismissal decision.

If the dismissal was carried out unlawfully, the court shall order its cancellation and will require the employer to pay compensation equal to wages indexed, increased and updated and other rights to which the employee would have been entitled. Also, if the employee does not request the reinstatement of the job before issuing the act of dismissal, the individual labour agreement shall cease at the date of the final and irrevocable court decision.

4. BUSINESS TRANSFER

The transfer of undertakings, businesses or parts thereof is a common practice nowadays, meaning that a business or undertaking, or a part of them, is transferred to a new employer, as a result of a legal transfer or merger.

4.1. Special legislation / rules regarding business transfer

The special rules regarding the transfer of the employees in case of business transfer are stipulated by the Labour Code and by Law no. 67 / 2006 on the protection of employees' rights in the transfer of undertakings, businesses or parts thereof.

The Law no. 67 / 2006 on the protection of employees' rights in the transfer of undertakings, businesses or parts thereof transposes the Directive 2001/23/CE and represented a measures included in the legislative program priority for the E.U. integration program.

4.2. Right to be transferred

In case of business transfer, the transfer of transferors' employees is automatically made, retaining for the transferred employees all the rights and obligations existing under their contracts of employment with the previous employer.



The transferee has the obligation to uphold the collective labour agreements, in the same terms and conditions applicable to the transferor under that agreement, labour agreements whose clauses may be renegotiated, but not earlier than one year as of the date of transfer.

The transfer shall not constitute a dismissal ground for any party, except two reasons of dismissal which are considered lawful: when economic, technical or organizational reasons determine the employer to implement changes regarding the work-force and if the transferor is subject to a judicial reorganization or bankruptcy procedures.

Considering all the means of protection established in favour of employees in case of undertaking transfer, they can easily address to the Court in case of dismissal by transfer reason or in any other situation for which the law requires careful treatment of the employees.

4.3. Effects of the right to say no to be transferred

In case of business transfer, the transferor and the transferee shall inform the employees, in writing, at least 30 days before the date of transfer about: the date or proposed date of the transfer; the reasons for the transfer; the legal, economic and social implications of the transfer for the employees; the measures envisaged in relation to employees and the conditions of work and employment.

As regards to the right of the transferred employee to say no to the transfer, our legislation does not expressly provide it.

In practice are mentioned several opinions – from the right to say no to be transferred in which case the refusal is equivalent to resignation or dismissal for cancellation of job to the opinion that says that informing the employees about the transfer is satisfactory.

However, if the transfer of business involves a substantial change in working conditions to the detriment of the employee, the employer is responsible for the termination of the employment contract.

5. RIGHT TO STAY IN EMPLOYMENT DURING THE PERIOD OF NOTICE

According to the Romanian Labour Code, during the notice period, the employment contract is effective; if during notice period occurs suspension cause of the employment contract, the notice period is also suspended.

Given the above, during the notice period, the employee has the right to go to work and to perform his duties according to the employment contract.

6. SPECIAL TOPICS

6.1. The obligation to negotiate with trade unions before taking any formal decision

If the employer intends to carry out collective redundancies, he has to initiate timely and aimed at reaching an agreement, as provided by law, consultation with trade union or, as appropriate, with representatives of the employees, regarding the methods and means of avoiding collective redundancies or reducing the number of



employees to be fired and the methods to mitigate the consequences of dismissal by the use of social measures as: support for changing profession or retraining of employees fired.

In case of business undertaking, the transferee has to inform and to consult the representatives of the employees affected directly or indirectly by the transfer.

The information shall have as a subject the date of the transfer, the reasons, the legal, economic and social implications for the employees, and any measures envisaged.

Romanian law requires that the information and consultation process to take place at least 30 days prior to the transfer date.

The consultation of the trade or of the representatives of the employees has to take place also when an internal regulation is drawn up, in case of collective labour agreements negotiation and anytime the law requires.

6.2. Damages

As a general rule, in case of breach of any obligation settled by labour legislation, the employer has to pay to the employee, future employee or former employee the damages caused by such breach. The damage shall be determined depending of the harm brought to the employee by the violation of law.

Usually, the damages are calculated on the basis of employee's salary but also on behalf of the evidences that prove the extent of the damage produced by employer's acts. For example, in case of unlawful dismissal, the court shall order its cancellation and will require the employer to pay compensation equal to wages indexed, increased and updated and other rights to which the employee would have been entitled.

6.3. Courts

The conflict regarding dismissal such as any conflict between employees and employers shall be settled by the competent court under the Code of Civil Procedure, any application in this matter being exempt from stamp duty.

Applications under labour legislation are judged urgently. An important aspect is that as an exception to common law, the burden of proof is on the employer.

Applications for settlement of labour disputes shall be settled urgently and the judgments are final and enforceable.

The conflicts between employees and employers can also be settled by arbitration if in the employment agreement is included an arbitration clause.

Labor conflicts can as well be settled through mediation that can be carried before or during a judicial procedure.

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