

Romania: Employee Handbook once again mandatory for SMEs

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On 14 September 2022, the Romanian Chamber of Deputies sent for promulgation the law rejecting the Government Emergency Ordinance no. 37/2021 (GEO 37/2021) amending and supplementing Law no. 53/2003 of the Labour Code (Labour Code), hereinafter the Rejection Law.

This amendment (re)imposes obligations on microenterprises (SMEs) regarding the obligation to draft and implement certain employment-related documents that were initially made optional, up to a certain degree, by GEO 37/2021.

1 Relevant provisions of GEO 37/2021

GEO 37/2021 was adopted with the aim of simplifying and streamlining employment relations for SME employers, eliminating the obligation of SMEs to draw up certain documents.

For the purposes of the law, **microenterprises or SMEs are companies which, among other criteria, have no more than 9 (nine) employees and an annual net turnover / assets in the value of up to EUR 2 million.**

For SMEs, GEO 37/2021 provides that the following documents are optional:

- **Employee Handbook** - In the absence of an Employee Handbook, the employer-employee relationship is governed by the general provisions of the Labour Code;
- **Job description** - In the absence of a job description, the duties related to the job can be communicated verbally to the employees. However, *the optional nature of the job description is questionable*, given that GEO 37/2021 also sets out that if the employee specifically requests in writing the communication of the job description, the employing SME is obliged to provide such job description in written form.

Under the conditions of GEO 37/2021, many SMEs have given up drafting these documents in written form or, even if they had previously prepared such documents, they have ceased to use them in their employment relations.

In addition, GEO 37/2021 makes **the procedure for recording daily working hours more flexible**. In this respect, the parties (the SME as employer and its employees) were given the possibility to agree, in writing, on how to complete the timesheet in relation to the specific activity. This regime also applied prior to GEO 37/2021, but only to mobile employees and employees working from home.

2 Amendments under the Rejection Law

Once the Rejection Law enters into force, the flexibility measures adopted by GEO 37/2021 will cease to be in effect. Therefore:

- **SMEs will again be obliged to draw up an Employee Handbook and job descriptions;**
- **The procedure of recording daily working hours will be established at the company level, in the Employee Handbook or another relevant company policy.**

2.1 Employee Handbook – relevant matters

The Employee Handbook is a document issued by the employer, detailing the employer-employee relationship in connection to the employer's specific activity.

Employee Handbook contents

When drafting the Employee Handbook, employers shall consider including at least the following information provided by the Labour Code as mandatory to be prescribed in any Employee Handbook, subject to further amendments to the Labour Code:

- (a) Rules on protection (including labour protection), hygiene and safety at work;
- (b) Rules concerning non-discrimination and elimination of any form of violation of dignity;
- (c) Rights and obligations of the employer and employees;
- (d) Procedure for the amicable settlement of individual labour disputes, requests or grievances of employees;
- (e) Specific rules on work discipline;
- (f) Disciplinary offences and applicable sanctions;
- (g) Disciplinary procedure;
- (h) The application of other specific legal or contractual provisions;
- (i) Criteria and procedures for the professional evaluation of employees.

Employee Handbook communication

Once the Employee Handbook is drawn up, the employer is obliged to inform the employees about it, and it will take effect as of the date the employees were informed.

The specific method of information is laid down in the Employee Handbook. SMEs, similar to any other employer, will be able to communicate the Employee Handbook either:

- physically, by displaying it at the company's premises or by personal delivery to employees; or
- electronically, by communicating it to all employees via their professional email addresses or even by uploading it to an online medium (e.g. the company's Intranet) while providing the relevant access details to the employees.

Whichever method of communication the employer chooses, it must ensure that employees have access to and can review the document and that the employer can obtain confirmation of acknowledgement. Acknowledgement may be in the form of an affidavit signed by the employees or confirmation of the receipt of the document or acknowledgement sent by email.

Drafting deadline

- In the case of **SMEs incorporated after the date of entry into force of the Rejection Law**, the legal provisions are clear, in the sense that the Employee Handbook must be drawn up within 60 (sixty) days upon the date of acquiring legal entity status;
- In the case of **SMEs already incorporated on the date of entry into force of the Rejection Law**, the deadline for drafting the Employee Handbook is rather unclear. However, our opinion is that the provisions of

the Labour Code can be applied by analogy to such cases, as well. Therefore, it may be considered that these SMEs will have a 60-day (sixty day) period as of the date of entry into force of the Rejection Law, for drafting and implementing the Employee Handbook.

2.2 Job description – relevant matters

The job description includes, among other aspects, the duties and responsibilities related to the position held by the employee, including the employee's responsibilities regarding occupational safety and health. In practice, the job description does not (and should not) provide an extremely detailed and exhaustive list of activities to be performed by the employee but rather a guideline to the type of activities the employee's job entails, as examples and general terms.

In the vast majority of cases, the job description is attached as an annex to each individual employment contract and forms an integral part of it and should be signed by both the employer and the employee. Other employers may choose to keep it in electronic format. Significant changes to the job description will require the employee's consent. Such significant amendments would consist of new responsibilities suggesting a new role or an entirely different position for the employee. In such a case, a new updated job description should be signed by both the employer and the employee.

3 Entry into force of amendments described herein

For the above-mentioned amendments to enter into force, the Rejection Law must initially be promulgated by the President of Romania and published in the Official Gazette of Romania, Part I.

Within 3 (three) days upon the date of publication in the Official Gazette, the new amendments, as described above, will take effect for SMEs.

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