

Significant overhaul of the Romanian Labour Code

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The Romanian Labour Code has recently experienced significant changes. On 19 October 2022, Law 283/2022 for the amendment and complement of Law 53/2003 - the Labour Code, as well as for the amendment and complement of GEO 57/2019 regarding the Administrative Code was published in the Official Gazette.

Focusing on the employment side of Law 283/2022, through these amendments the Labour Code appears, on the one hand, to formalise certain circumstances already existing in the Romanian employment practices. On the other hand, it seeks to thoroughly set out in the individual employment agreements as many details as possible regarding the employment relation, also bringing a rather employee-protective perspective into focus.

1 Relevant amendments - Law 283/2022

Law 283/2022 amends the Labour Code by introducing provisions regarding:

- new employees' rights and notions such as caretaker leave (five (5) working days / calendar year, at the most), or the possibility to take a leave of absence due to family emergencies (10 working days / calendar year at the most);
- new prohibitions against dismissals for circumstances where the employee is exercising rights set out by law, during the caretaker leave, paternity leave or during leaves of absence due to family emergencies;
- informing employees on the employees' handbook by electronic means. Employers will still be able to communicate the employees' handbook to their employees in hard copy, but the possibility to communicate it by electronic means is now expressly regulated by this amendment. In practice, even before this amendment, many employers communicated the employees' handbook to their employees electronically e.g. via company intranet. However, an issue may now arise when amending the employee handbook, in terms of whether it is sufficient for the employer to communicate electronically the *entire* employees' handbook, *only* the specific amendments, or the employees' handbook highlighting the amendments. Therefore, we take the view that for the time being it will be unclear how specific the employers should be when notifying such amendments;
- additional mandatory information to be delivered to employees when concluding the individual employment agreement (e.g. travel costs for mobile employees, probation period conditions, specific elements included in the salary, namely the particular value of any allowance, variable methods of computing the salary as well as how overtime is compensated, professional trainings, private pensions or private health insurance covered by the employer). Regarding private pensions or private health insurance covered by the employer, it is unclear if the legislator intended to make such pensions/insurances contractual (including for tax deductibility purposes). In any case, if made contractual, any subsequent amendments (including termination of payment) are subject to the employee's consent.

As regards the performance of the individual employment agreement, Law 283/2022 sets out that:

- employees are entitled to work for one or more employers, *without overlapping work schedules*, and employers cannot treat such employees less favourably based on these grounds. This amendment is also aligned with a new draft law for further amendments to the Labour Code which will likely regulate the possibility an employee working for multiple employers which are related parties. This latter draft law is still under analysis;
- employees are allowed to request their transfer on a vacant position if such a position offers more favourable

working conditions, and the employer is obliged to respond to such requests within a 30 day period. Therefore, the employer does not have an obligation to implement the transfer requested by the employee but has the obligation to give a reasoned response to the employee's request, in the sense of accepting or rejecting it.

Law 283/2022 also brings amendments to the employees' handbook's content. Per these mandatory provisions, the employees' handbook:

- must include rules regarding the prior notice period and information regarding general professional training policies, if any;
- must be made available to new employees on their first day of work;
- must be in a format which can be stored and *printed* by the employer (which is part of the employer's obligation to make the employees' handbook readily available to the employees);
- is applicable as of the moment when it was delivered to the employee (i.e. either in hard copy or by electronic means).

We further note that the newly introduced provisions appear to be relying on the Order which should be issued by the Ministry of Labour and Social Solidarity within 30 days as of the publication of Law 283/2022 in the Official Gazette.

2 Sanctions

Employees who have not received all of the relevant information as per the recently amended Labour Code are entitled to file complaints with the Labour Inspection (the relevant authority on labour audits). We note that this is not a prior mandatory procedure, as the Labour Code specifically sets out that the employees can, alternatively, opt to file a claim with the court and request compensations for the employer's failure to observe the obligation to inform the employee.

We take the view that the amendments setting out additional obligations of informing the employees on the employment-related aspects described above may create some exposure for employers to the risk of applications being filed with the courts by employees who feel they may have been insufficiently informed on various aspects. We do not necessarily take into account bad faith but rather an inaccurate drafting of the information obligations.

The administrative fines which can be issued by the labour authorities are between RON 5,000 and RON 10,000 (i.e. between approx. EUR 1,000 and EUR 2,000).

3 Entry into force of the amendments

Law 283/2022 entered into force on 22 October 2022. However, according to the same law, for employees engaged in employment relations prior to the coming into force of Law 283/2022, the additional information regarding their employment will be delivered by the employer within a maximum of 30 working days from the written request submitted by the employee. Nevertheless, the lack of said request does not exempt the employer to enforce the minimum rights and entitlements set out by the Labour Code, including those provided by Law 283/2022.

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