

11. ROMANIAN LABOUR LAWS

Updated September 2015

The relevant **Romanian labour laws** are:

- ✓ **Labour Code**, approved by the Law no. 53 of 2003 (“**Labor Code**”)
- ✓ Law no. 62 of 2011 Regarding the Social Dialogue (“**Law no. 62**”)
- ✓ Law no. 67 of 2006 Regarding the Employees’ Protection in Case of the Transfer of Undertakings (“**TUPE Law**”)

General Terms and Conditions of Employment

The standard terms of the employment are provided by the Labour Code.

The Romanian labour laws require the mandatory filing with the Employees’ Registry, i.e. REVISAL of a Standard Employment Agreement in Romanian language. This is a 3-page form issued by the Ministry of Labour.

In practice, the employers supplement the provisions of the Standard Employment Agreement with an Annex. Such Annex includes detailed rights and obligations of the parties to the employment agreement.

A Job Description must be appended to the Standard Employment Agreement as well.

The Standard Employment Agreement has to be registered with the Employees’ Registry, a day prior to the starting date of the execution of the employment agreement.

The Labour Code provides that the employment agreement shall not include provisions which would diminish the employee's rights below the minimum levels established by the relevant legislation.

Any document regarding the execution of an employment agreement has to be registered with the Employees’ Register one day prior to the starting date of the employment.

An employment agreement shall be concluded after a prior verification of the professional and personal skills of the person applying for employment. Also, a person may only be employed on the basis of a medical certificate, attesting that the concerned person is able to perform the respective activity.

Types of employment agreements

Usually, the employer and the employee conclude an employment agreement for an undetermined period of time.

However, the Labour Code also provides for other types of employment agreements, such as:

- a. *The employment agreement for a determined period of time*

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This type of agreement is an exception and is concluded in the specific situations expressly provided by the Labour Code. An employment agreement for a limited duration may not be concluded for a period exceeding 36 months.

b. The part-time employment agreement

The part-time employment agreement must provide for:

- (i) the working hours schedule, which must be shorter than the regular working schedule of 8 hours/day and 40 hours/week;
- (ii) the conditions under which the working schedule can be amended;
- (iii) the prohibition to work overtime.

c. The temporary employment agreement

This type of employment agreement is concluded between the temporary employment agent and the employee, for one or more employment missions which will be performed by such employee for a beneficiary. Usually, the companies providing Human Resources services are also authorized as temporary employment agents.

The temporary employment agreement states the conditions under which the employment mission is to be carried out, the duration of the mission, the identity and offices of the beneficiary, as well as the remuneration methods for the temporary employee.

Trial period

The parties may also agree with regard to a trial period of maximum 90 calendar days for regular employees, and 120 calendar days for management employees.

However, such a trial period is not mandatory, but in case the parties agree upon it, only 1 (one) trial period can be established.

Throughout the trial period or at the end of it, the employment agreement may be terminated, based on a written notice at the initiative of either party.

Working hours and working time schedule

The regular working schedule is of 8 hours/day and 40 hours/week. Usually, the working hours are distributed uniformly, 8 hours/day, 5 days a week with 2 rest days.

The maximum legal duration of the working time cannot exceed 48 hours per week, including overtime.

By way of exception, the duration of the working time including overtime can be extended over 48 hours per week, provided that the average of the number of working hours, calculated for a reference period of 4 calendar months, shall not exceed 48 hours per week.

Also, with regard to certain activities or professions established by the applicable collective employment agreement, reference periods exceeding 4 months can be negotiated by the said collective employment agreement, but these periods cannot exceed 6 months. The former

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regulations provide the possibility to establish reference periods exceeding 3 calendar months, but which could not exceed 12 months.

Subject to the compliance with the regulations regarding the labour health and safety protection of the employees, in cases of objective, technical or operational reasons, the collective employment agreements can provide exceptions from the duration of the reference periods established above, but such exceptional reference periods cannot exceed 12 months.

Salary and extra earnings

The salary is freely negotiated between the employer and the employee, and includes the basic salary, indemnifications, bonuses, as well as other additional payments.

The salary level is based on individual or collective negotiations and the employer may not negotiate and establish the minimum salary level below the minimum national gross salary.

The minimum gross salary is provided by Government Decision and it is of mandatory application at national level.

According to the provisions of the Labour Code, the employees shall receive indemnities for overtime, night work, bonuses for non-compete and mobility clause and allowances for domestic or foreign business trips.

Besides bonuses, indemnities and allowances established by the relevant legal norms, the employers may grant additional payments for exceptional results on specific projects.

Termination of Employment Agreements

The termination of the employment agreements may occur for reasons pertaining to the employee's fault or for reasons independent of such fault.

a. Termination due to employee's fault

The employer may decide the employee's dismissal for reasons imputable to the employee in the following cases:

- (i) If the employee committed a severe violation or repeated violations of the Labour discipline, or of the rules established by the employment agreement, the CEA or the internal regulations, such as the Code of Internal Conduct.

According to the Labour Code, the employer must issue the Code of Internal Conduct. The Labour Code further provides that such Code should include rules applicable to all employees regarding work safety, non-discrimination, proper behavior at the work place, procedures regarding employees' requests and complaints, work discipline, violations and sanctions, disciplinary procedure, and rules related to the rights and obligations of the employer and employees, or other specific legal or contractual matters.

In case of disciplinary dismissal, the employee may be dismissed only after a prior disciplinary inquiry carried out in accordance with the provisions of the Labour Code.

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Failure to conduct the disciplinary inquiry in compliance with the provisions of the Labour Code will result in the annulment by the court of the decision of termination of the employment agreement.

- (ii) If the employee is in police custody for more than 30 days.
- (iii) If the employee has a physical or psychological disability confirmed by a certificate issued by the relevant authorities.
- (iv) If the employee is professionally unfit for the job.
- (v) If the employee fulfills the legal requirements, and the employee did not apply for retirement.

b. Termination due to reasons independent of the employees' fault

Usually, this type of termination is caused by the elimination of the employee's position due to reason(s) which does/do not pertain to employee's fault.

Such reasons may be:

- economical difficulties;
- technological changes; or
- reorganization of the employer's activities.

This procedure requires the preparation by the management of an adequate documentation in support of the decision for the termination of the employment agreement.

Prior Notices

The dismissed employees will receive, as a rule, a prior dismissal notice of minimum 20 business days.

In case of disciplinary termination or in case the employees are on trial, the employers do not have to issue a 20-day prior notice regarding the termination.

The employees in management positions usually negotiate a longer prior-notice term in the employment agreement.

Severance Payment

The employees dismissed due to the reasons not pertaining to the employees' fault are entitled to the payment of a severance payment, as per the provisions of the collective employment agreement applicable at the company level, as the case may be.

The employees in management positions usually negotiate severance packages when concluding individual employment agreements.

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Employees on leave during the dismissal process

The Labour Code provides certain cases when the employees may not be dismissed:

- during the employee's temporary working incapacity (sick leave);
- during pregnancy and maternity leave;
- during the leave for child care up to the age of 2 or for disabled child up to the age of 3;
- during the leave for taking care of a sick child up to the age of 7 or for disabled child having common illnesses until the age of 18;
- during military service;
- during the exercise of an eligible function within a union body, unless the dismissal is decided for a serious misconduct or for repeated misconducts, committed by that employee;
- during annual paid leave.

The employers cannot issue Termination Decisions during these leave periods, and if such decisions are still issued, they are null and void.

Collective Employment Agreements

If the employer has at least 21 employees, a Collective Employment Agreement for all the employees needs to be negotiated and concluded, in accordance with the provisions of the Law no. 62.

The standard terms of employment are those provided by the Collective Employment Agreement entered into by the employer on one side and the employees on the other side, who may be represented during the negotiation by the Trade Union or the Employees Representatives. It must be also noted that, pursuant to the provisions of Law no. 62, a Collective Employment Agreement applies to all the employees of a company, irrespective of the fact that they are union members or not.

Labour Disputes

The Labour disputes are settled by a special section of the competent Tribunal. The labor disputes are exempted from court and stamp fees.

Labour litigation in the courts of first instance may take 6 (six) months or more depending on the complexity of the case, witness appearances, and discovery proceedings.

Law no. 62 provides that an appeal against the decision issued by the court of first instance may be filed within a 10-day term from the date of the receipt of the court decision by the appellant.

The service of process is done by the court, which mails the summons for the initial hearing to the parties.

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A termination procedure which did not comply with the legal provisions is annulable. In such case, the court will decide the annulment of the termination, and will compel the employer to re-hire the employee, and to pay damages equal to the total compensation to which the employee would have been entitled for the period that he/she was out of work.

TUPE Law

The employees' protection in case of the transfer of undertakings is regulated by the Labour Code and by TUPE Law.

The provisions of the mentioned regulations need to be complied with when an Employer transfers its business or part of it to another Employer.

Pursuant to the provisions of TUPE Law, both the Transferor and the Transferee have to inform in writing the Employees' Representatives or the relevant Trade Union 30-days before the effective date of the transfer with regard to the following:

- i. the fact that a relevant transfer is to take place, the proposed date of the transfer, and the reasons for such transfer;
- ii. the legal, economic and social consequences of the transfer;
- iii. if any measures in relation to the transferred employees are to be taken;
- iv. the conditions of employment.

The rights and obligations of the Transferor, arising from an employment agreement existing at the date of the transfer, shall be entirely transferred to the Transferee.

Pursuant to the relevant legal provisions, the transferred employees cannot be granted rights that are inferior to those they had under the current employment agreement.

According to the TUPE Law, the transferred employees may not be dismissed for reasons due to or in relation to the transfer of undertaking.

Failure by the Transferor and Transferee to comply with the obligations provided in this Law is considered a violation and is punishable by fines.

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