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Legal Bulletin



Labour law

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Emergency Ordinance No. 53/2017 for the amendment and supplementation of Law No. 53/2003 - the Labour Code

Government Emergency Ordinance No. 53/2017 (“GEO No. 53/2017”) which brings a set of amendments and supplementations to the Labour Code, mostly as regards the control of undeclared work, was published in the Romanian Official Journal, Part I No. 644 of 7 August 2017.

The amendments and supplementations brought by GEO No. 52/2017 may be summarized as follows:

Undeclared work is defined at Article 15¹ as follows:

- a) Employing a person without executing a written individual employment agreement on the day preceding the commencement of work;
- b) Employing a person without notifying the employment relationship to the general register for the record of employees no later than on the day preceding the commencement of work;
- c) Employing an employee during the period when the individual employment agreement of such employee is suspended; and
- d) Employing an employee outside the work schedule provided in the part-time individual employment agreements.

It has been expressly provided that the individual employment agreement must be concluded before the employee starts working and that the employer has the obligation to execute the agreement in written form.

GEO No. 52/2017 provides for the employer’s obligation to keep at the place of work a copy of the individual employment agreement for the employees working in such place.

The amendments brought to the individual employment agreement must be provided in an addendum before such amendment is made¹, except for the case when the amendments are expressly provided by the law or the applicable collective bargaining agreement - in which case they are applicable independently from the execution of an addendum and no matter if an addendum is executed or not.

The employer must keep, at the place of work, the record of hours worked daily by each employee, stipulating the workday start and finish time and must submit such record to the labour inspectors whenever requested.

Employer's act of employing more than 5 persons without executing an individual employment agreement is no longer charged as a criminal offense. Any such act, irrespective of the number of persons employed under these circumstances, is a misdemeanour punished by a fine of RON 20,000 for each identified person².

New misdemeanours and related fines have been provided as follows:

- a) Employing a person without notifying the employment relationship to the general register for the record of employees no later than on the day preceding the commencement of work - a fine of RON 20,000 for each identified person;
- b) Employing an employee during the period when the individual employment agreement of such employee is suspended - a fine of RON 20,000 for each identified person;
- c) Employing an employee outside the work schedule provided in the part-time individual employment agreements - a fine of RON 10,000 for each identified person; and
- d) Breach of employer's obligation to keep at the place of work a copy of the individual employment agreement for the employees working in such place - a fine of RON 10,000.

Also, a new set of rules has been introduced as regards the status of misdemeanours:

- a) The offender may pay half of the fine within no more than 48 hours as of the execution date of the minutes or, as the case may be, as from the date when such minutes is served, for some of the acts (i.e., the misdemeanours provided at letters a) to c) above and for employing a person without executing an individual employment agreement); the labour inspector will stipulate this possibility in the minutes; and
- e) For employing a person without executing an individual employment agreement and for the misdemeanours provided at letters a) to b) above, the labour inspector will order, as a complementary penalty, the cessation of activity at the organized place of work which is under control, according to the cessation procedure prepared by the Labour Inspection

¹ Before GEO No. 53/2017 became effective, the addendum could be executed within 20 business days as of the date when the amendment occurred.

² According to the former law, the fine ranged from RON 10,000 to RON 20,000.

Authority and approved by order of the Minister of Labour³; the employer may resume activity only after having paid the fine and having remedied the deficiencies which led to the cessation of activity.

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³ Such a procedure is yet to be elaborated.

Editors

Employment is one of the practice areas in which our lawyers have acquired extensive experience, ranging from management schemes tailored for both entities undergoing privatisation or private entities set up by international corporations in Romania, to preparing and negotiating collective and individual labour agreements and related specific clauses (employee benefits, restrictive covenants, stock option plans and trade option plans). Our attorneys also deal with employment related matters in relation to mergers & acquisitions and privatisations, involving redundancy programs, negotiations with trade unions, pension issues raised in transactions, investment management agreements etc. Our specialists are frequent lecturers on employment law issues and regular contributors to local and foreign publications, whilst being actively involved in the activities of reputed domestic and international associations and organisations such as the European Employment Lawyers' Association (EELA), Multilaw, AmCham etc.



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