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Romania: New amendments of law no 53/2003 – the Labour Code

In order to stimulate the economic growth in the current situation of the economic crisis, the Romanian Government has adopted Law no 40/2011, strongly criticized by the social partners (the unions) and by the political opposition, which is intended to amend the Law no 53/2003 - the Labour Code. The new normative act is meant to bring a new, more flexible approach to the labour market, previously unbalanced in favour of the employee.

Law no 40/2011 for the amendment of Law no 53/2003 – the Labour Code was published in the Romanian Official Gazette ("Monitorul Oficial") Part I, no 225 of March 31, 2011 and shall **come into force on the date of April 30, 2011**.

The main amendments stipulated by Law no 40/2011 refer to:

- **The written form of the individual labour contract**

One of the most important changes implemented by the new provisions refers to the fact that the written form of the individual labour contract has become a validity condition, whereas in the past orally contracts were sufficient and written ones only meant to serve as a proof.

- **The medical certificate**

The medical certificate must now be submitted before or at the conclusion of the individual labour contract, under the sanction of nullity. This issue can no longer be rectified by presenting a medical certificate during the execution of the labour contract, meaning the medical certificate cannot produce retroactive effects.

- **The registrations related to the labour contracts**

The information submitted to the online registration system REVISAL has been now changed, meaning more data has to be registered.

- **Cumulating individual labour contracts**

The employee no longer has to declare which is the main contract, in case he is concluding labour contracts with different employers. This aspect has fiscal implications.

- **Efficiency criteria and evaluation**

The right of the employer to establish targets in the individual efficiency and the evaluation criteria is now clearly specified. This change is welcomed by the employers as it tries to provide additional criteria for evaluations of labour performance. Simplifications for mass dismissals are expected.

- **Probation stage in the individual labour contract**

According to the new rules, the employee's probation period agreed in an individual labour contract concluded for undetermined period may not exceed 90 calendar days for regular employees and 120 calendar days for management positions. No further distinctions are provided.

While the current version of the Code forbids probationary employment of more than three persons consecutively, for the same position, the new version lifts this restriction, within the time limit of 12 months.

Probation period in case of temporary labour contracts has also been amended.

- **The delegation of the employee**

According to the new stipulations, the delegation can be made for maximum 60 calendar days in the newly introduced reference period of 12 months and can be prolonged for successive period of maximum 60 calendar days, but only with the employee´s consent.

- **Fixed-term individual labour contracts**

The new amendments extend the duration of such contracts to 36 months (old: 24 months). The individual labour contracts of limited duration, concluded within three months from the termination of a labour contract of limited duration, shall be considered successive contracts. Successive contracts can be concluded only 3 times. Each successive contract is limited to a period of maximum 12 months.

- **Termination of the individual labour contract**

Some reasons for automatic termination of the labour contract have been rephrased and modified (e.g. death, reaching the pension age).

- **Dismissals**

In case of resignation, employers are now obliged to register the resignation. Also, the prior notice period in case of resignation may now not be longer than: 20 business days

for regular employees, 45 business days for management staff. In case of dismissal, the prior notice period may not be shorter than 20 business days.

Other provisions mention the illegal individual and collective dismissals and the possibilities of the employee to be reintegrated in his position following the annulment of these incorrect dismissals. The existing provisions are slightly changed.

- **Working time flexibility**

The amendments refer as well to the maximum legal duration of the working time, which is now calculated starting from a reference period of 4 months, while the maximum time reference period has been imposed some additional restrictions. Other changes consider the compensations for night shifts and compensations for the overtime work, as well as new possibilities for the employer to temporarily reduce the schedule and the activity.

- **Temporary work**

The amendments in this field are comprehensive and aim to eliminate the prior restrictions of the old Labour Code and are in accordance with the provisions of art. 4 of the Directive no. 2008/104/CE, regarding the work through temporary work agents. The new amendments are intended to increase the flexibility of the temporary work, by increasing the maximum duration of the temporary mission to 24 months and the total duration, including the prolongations, to maximum 36 months. Labour contracts concluded between the work agent and the temporary worker may be for an unlimited period of time. The salary stipulation for the temporary worker can be reduced to the minimum salary according to the law. By eliminating the obligation to pay the temporary worker between two jobs, although he will continue to stay available for the employer, has been created another advantage aspect for the labour agent. The employee may still obtain a proper compensation via a direct negotiation so his rights should not be infringed by the new legal provisions.

- **Leave scheduling**

In case the leave is divided, the employer shall set the schedule in such a way that every employee takes at least 10 business days of uninterrupted leave in one calendar year.

- **Disciplinary measures**

The suspension of the individual labour contract for a time frame not exceeding 10

working days, as a disciplinary sanction, is now abrogated and cannot be used any more.

- **Vocational training**

During the participation to the vocational training courses or internships, the participating employee shall enjoy all pecuniary rights, independent on the proportion in which the training affects the working time.

For further information on this aspect and any other questions related to labour law please feel free to contact: Mag. Gizella Popescu, LL.M. (gizella.popescu@nhbukarest.eu).

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