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Romania

EMPLOYMENT & LABOUR LAW

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This country-specific Q&A provides an overview of employment & labour law laws and regulations applicable in Romania.

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ROMANIA
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1. What measures have been put in place to protect employees or avoid redundancies during the coronavirus pandemic?

The main employment-oriented measures taken by the authorities during the coronavirus pandemic are:

Financial measures

a) temporary unemployment – the state is covering 75% of the salary (capped at EUR 835) of employees sent into temporary unemployment by companies affected by the coronavirus crisis if their activity is interrupted, totally or partially or is reduced as a result of the effects of the COVID-19 pandemic.

b) Reduction of working hours – employees affected by this measure will receive from the government an indemnity of 75% of the difference between the gross basic salary provided for in the individual employment contract and the gross basic salary corresponding to the hours actually worked as a result of reduced working hours. This amount will be added to the salary corresponding to the hours actually worked during this period.

Social measures

a) Granting paid time off to parents, in order to enable parental supervision of their children during the temporary closing of educational establishments.

b) Ensuring continuity in the granting of return to work incentives and child care allowance, as well as for facilitating access to medical leave and medical leave indemnities for quarantined persons.

2. Does an employer need a reason in order to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

In order to be valid, the termination of an employment contract for redundancy must be determined by the elimination of the position occupied by the respective employee from the organizational chart.

The elimination of the employee's position has to be effective (i.e., the position in question needs to be eliminated and cannot be renamed or recreated under a different denomination) and to be grounded on real and serious reasons (i.e., the purpose of this reorganization should not appear to be solely aimed at removing a certain employee but must be grounded by objective reasons).

3. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

The dismissal due to redundancy can be either individual or collective.

In case of a collective dismissal, additional procedural rules must be fulfilled by the employer (see answer to question 8 below).

The dismissal is collective in case the redundancy affects the following thresholds of employees within a 30-calendar day period:

- at least 10 employees if the employer has more than 20 but fewer than 100 employees;
- at least 10% of the workforce, if the employer has at least 100 but fewer than 300 employees;
- at least 30 employees, if the employer has 300 or more employees.

4. What, if any, additional considerations apply if a worker's employment is

terminated in the context of a business sale?

If the business sale does not fall under the concept of transfer of undertakings, then there are no additional considerations to be applied for such employment termination.

If the applicability of the transfer of undertakings legislation is ascertained, then in order to implement employment termination, the employer has to prove that the termination is not a consequence of the transfer itself.

5. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

Pursuant to the Romanian Labour Code provisions, the minimum notice period in case of dismissal is of 20 business days, but the parties may negotiate a higher notice period.

As an exception, disabled persons dismissed for reasons not imputable to them, benefit from a notice period of at least 30 working days.

6. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

In accordance with the Romanian Labour Code, during the notice period, the employment agreement remains in force, meaning that the employee is required to work and the employer shall pay wages and other contractual entitlements. Payment in lieu of notice is not specifically permitted.

7. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?

Even though not specifically regulated by the Romanian employment legislation, in practice, if both parties agree, the employee may be placed on garden leave with pay and benefits without being required to come to work and perform work related activities.

8. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

Individual dismissal

- Presentation of an analysis justifying the necessity of the reorganization and proposal to reorganize the employer's activity by eliminating the respective position/s, including the rationale for it and goals to be achieved. Such analysis shall be prepared by an internal body of the company or by a third party, subject that the person/persons signing the analysis is/are aware of the company's business and can make a proposal for restructuring the activity.
- Approving the reorganization decision by the competent body of the employer – on grounds of the analysis mentioned above, the competent body shall approve the reorganization of the activity and the elimination of the position(s);
- Issuing the prior written notice and the individual dismissal decision – the dismissal decision shall be issued in writing and communicated to the employee and must include the minimum requirements provided by law.

Collective dismissal

- Preparation of a preliminary analysis (technical-economic analysis) justifying the necessity to reorganize the company's activity;
- Corporate decision approving the intention of reorganization in accordance with the corporative rules applicable in the company;
- Notification of the intention to implement the collective dismissal – Consultations with the employees' representatives/trade union;

According to the Romanian Labour Code, the employer has the obligation of initiating, in due time, consultations with the employees' elected representatives or trade union, as the case may be, aimed at reaching an agreement. The consultations shall refer to at least the following issues: (i) the methods to avoid the collective dismissal or to reduce the number of the employees to be dismissed; and (ii) diminishing of the dismissal's consequences by social measures aiming, among others, for professional re-qualification or reconversion of the

employees.

- The employer has the obligation to forward a copy of the notification to both the territorial labour inspectorate and territorial employment agency on the same date it sends it to the employees' representatives/trade union;
- Corporate decision approving the reorganization and implementation of the collective dismissal;
- Notification of the decision to implement the collective dismissal;

The employer shall inform both the territorial labour inspectorate and the territorial employment agency, as well as the employees' representatives/ trade union, as the case may be, about the results of the consultations, by means of a written notification having a minimum content provided by the law. Such procedural step must be performed at least 30 calendar days prior to the issuance of the individual dismissal decisions.

- Prior written notice, which, in this situation, is also of minimum 20 working days subject that no collective bargaining agreement, internal policy or employment agreement provide for a longer notice period, situation in which the most favourable rights for the employee will apply;
- Issuing the individual dismissal decision which, in addition to the minimum content, should comprise the criteria for establishing the priority order applied when implementing the collective dismissal.

9. If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?

Failure to comply with the legal provisions regarding the dismissal cases and the procedural rules may entail the cancellation of the dismissal decision in case the employee challenges it in a court of law. In such case the court shall compel the employer to pay an indemnity equal to the indexed, increased or updated wages and other entitlements the employee would have otherwise benefited from during the period elapsed from the termination of the employment agreement and until the court's irrevocable decision and, upon the express request of the employee, will reinstate the employee on the position held prior to dismissal.

Moreover, it is possible that the employer be compelled to moral damages.

10. How, if at all, are collective agreements relevant to the termination of employment?

The Romanian employment legislation does not provide for any statutory severance payment to be granted to employees in case of termination of employment. Therefore, the collective agreements are relevant in this situation as such agreements may provide for additional rights/conditions stipulated in favour of the affected employees (e.g. longer notice periods, other incentives for the individual and/or collective dismissals).

11. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

In case of collective dismissal, the employer will have to submit to the authorities a copy of the notification of the intention provided to the trade union/employees' representatives (as the case may be), which shall have the following content:

- the total number of employees employed by the employer, and their categories;
- the reasons for the planned collective dismissal;
- the number and categories of employees to be made redundant;
- the criteria used to select employees for redundancy, which must comply with statutory provisions and any applicable collective agreement;
- the measures envisaged by the employer with a view to limiting the number of redundancies;
- the measures envisaged by the employer to mitigate the consequences of the collective redundancies, including the compensation to be granted to the redundant employees, in line with the law and any applicable collective agreement;
- the start date of the redundancies, or the period over which they will be implemented; and
- the deadline for the trade union or employee representatives to make proposals for avoiding or reducing the planned redundancies.

If, following the consultations with the trade union/employees' representatives, the employer decides to proceed with collective dismissals, it must notify the employment agency and the territorial labour inspectorate in writing. The notification must contain all relevant information mentioned above and also information about the dismissals (the reasons, the total number of employees, the number of employees that will be made redundant, the date when the dismissals will become effective) and the outcome of the consultation process.

Failure to comply with such obligation will give grounds for the affected employees to challenge such termination with all the corresponding consequences mentioned at question 9 above.

12. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

The Labour Code prescribes that the principle of equal treatment must apply within the framework of the employment relationship and gives all employees the right to equal opportunities and treatment, including in respect of termination of employment.

The following grounds shall constitute prohibited grounds of dismissal: race, nationality, ethnicity, colour, language, religion, social origin, genetic traits, gender, sexual orientation, age, disability, chronic disease, HIV infection, political choice, family situation or responsibility, affiliation or trade union activity, affiliation to a disadvantaged category.

Furthermore, any adverse treatment initiated as a reaction to a complaint or a legal action of an individual with regard to the infringement of the principle of equal treatment and non-discrimination principle shall represent victimization and shall also entail liability of the employer, should it be found responsible for such actions.

13. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

A dismissal that is based on a discriminatory reason or takes place pursuant to acts of harassment, is subject to annulment by the labour court. Such annulment entitles the employee to (a) reinstatement in his/her former position, (b) payment of all financial rights the employee would have obtained if not wrongfully dismissed and (c) payment of moral damages, depending on the circumstances of the case and whether it can be proved that the damages suffered by the employee are a result of the unfair dismissal.

Moreover, the employer may also be subject to penalties up to 200,000 RON (approx. 20,514 EUR).

Other sanctions may involve the obligation of the employer to bear the costs of psychological counselling that the employee needs, for a reasonable period established by the occupational physician or even the withdrawal/suspension of the operating license, in the case of legal entities, depending on the nature of the deed.

14. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

The Labour Code prescribes temporary prohibition against dismissal for the following:

- during pregnancy of the employee;
- during maternity leave (however, dismissal for reasons not related to the employee's condition – e.g. company reorganization or disciplinary dismissal, has been acknowledge as possible);
- during sick leave;
- during quarantine;
- during vacation of the employee;

The dismissal protection provided by the Labour Code shall not apply in the cases where the dismissal results from the employer's bankruptcy, judicial reorganisation (a restructuring or liquidation procedure ordered by a court) or dissolution of the employer.

- during parental leave for up to the first 2 years of the child's life, or for the first 3 years for disabled children;

In some situations, the protection against dismissal may be extended for an additional 6 months following the employee's definitive return to work.

- during payment of the return-to-work bonus, a monthly amount that is paid to parents who decide to go back to work before their parental leave ends;

In some situations, the protection against dismissal may

be extended up until the child reaches 3 years old, or in case of a disabled child until the age of 4 years.

- during leave to care for a sick child under the age of seven years, or if the child is disabled until the age of 18 years for intercurrent diseases.

15. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Law no. 571/2004 regarding the protection of personnel in public authorities, public institutions, and other entities provides special protection measures against retaliation or other abusive behaviours (e.g. harassment, disciplinary investigation, dismissal) following any type of disclosure regarding corruption offenses and other infringements.

However, such provisions only cover personnel employed in the public system, no specific legislation concerning whistleblowing system or protection measure has been adopted in Romania applicable to employees in the private sector. Thus, customary rules have to be used when considering the protection of an employee in whistleblowing cases.

Given the transposition term until December 2021 of Directive 2019/1937 on the protection of persons who report breaches of Union law, amendments are expected to be made to the employment legislation.

16. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

Pursuant to the Labour Code, employees may benefit from severance pay in case of dismissal due to business operations. The payment of compensation is however mandatory if the employee is dismissed due to physical and / or mental incapacity.

The severance payments are regulated by the applicable collective bargaining agreement. In the absence of collective bargaining agreements, these are also stipulated in the company internal regulations.

There is no mandatory minimum level of such severance pay; it can be freely negotiated and established by the social partners (i.e., the employer and the employees' representatives or trade union).

In practice, in the case of individual dismissal situation, the financial compensation paid to employees ranges from one to three salaries, while in the case of collective dismissal the compensation may start from at least three salaries and up, depending on the level of seniority or experience within the employer.

17. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

The employment agreement can be terminated by parties' agreement; however, the Labour Code stipulates that rights expressly acknowledged by the employment legislation may not be waived and any agreement purporting to waive or reduce such rights shall be deemed void.

Specific derogations concerning non-competition, non-solicitation and non-disclosure obligations can be agreed by the parties following termination of employment. It should also be noted that no express regulation has been adopted in relation to non-solicitation clauses of employees/clients; however, in practice, they are used based on customary rules.

18. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

A non-competition clause may be included in an employment contract at its signing date, or during its performance, whereby the employee undertakes, after the termination of the contract, to refrain from performing, on his or her own account or for a third party, any activity competing with the activities formerly performed for the employer, for a certain period. In return, the employer pays the former employee a monthly "non-competition benefit" for the entirety of this period. The employment contract must specify the competing activities that the employee is prohibited from performing, any relevant third parties, the amount of the benefit, the duration of the non-competition period, and the geographical scope of the restrictions on the employee. The monthly non-competition benefit

must be at least 50% of the average monthly wage earned by the employee in the six months before termination of the employment contract.

The maximum non-competition period is two years. A non-competition clause must not have the effect of absolutely prohibiting the employee from working in his or her occupational field.

If an employee wilfully breaches a non-competition clause, the employee may be liable to refund the benefit received and pay damages to the employer.

19. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

The employment contract may include a confidentiality clause providing that, for the duration of the contract and after its termination, either party must refrain from disclosing information acquired during the performance of the contract. Breach of such a clause makes the party in breach liable to pay damages to the other party. As no contractual penalties may be agreed upfront, any damages must be proved in court.

20. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

The Labour Code does not regulate an obligation for employers to provide such references when requested, thus they are subject to the employer's decision.

Nevertheless, should the employer agree to provide reference, the Labour Code expressly prescribes that only information concerning the performed activities and the duration of employment is to be provided to the new employer.

Moreover, the new employer can submit such request only after the prior notification of the employee.

21. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

Documentation and clear identification of the reason for dismissal may be the two most common difficulties employers face when envisaging a dismissal procedure.

The proper distinction between dismissal for poor performance and disciplinary misconduct is another common problem when initiating such dismissal procedure given the lack of understanding of the differences between the two situations and the required steps needed to be observed in each case. The adoption of compliant and up-to-date internal regulations is the first step on facilitating the implementation of such procedures.

Another issue which frequently arises in connection to disciplinary dismissal procedures is the improper/incomplete regulation of company rules (e.g. missing disciplinary procedures, no regulation regarding employee behaviour at work) or absence of the job description that regulates the framework of tasks and duties mandatory for the employee. Regular compliance checks are a key factor in identifying missing or outdated documentation.

In the absence of compliant dismissal procedure or improper documentation, the dismissal procedure runs the risk of being invalidated based on procedural vices, without any analysis of the factual causes of the dismissal. In this situation, the initiation of a new dismissal procedure may be perceived as retaliation affecting thus once again the claims of the employer and requiring much more consideration from a legal perspective.

22. Are any legal changes planned that are likely to impact on the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

There are no upcoming legal changes in relation to termination of employment. There has been recently a request for the High Court to adopt a guiding decision in the case of reorganisation procedures that imply the elimination of similar positions and the need to have selection criteria among the affected employees; however, the High Court rejected such request as it was a matter of application of law and not a problem of law interpretation.

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