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Romania

EMPLOYMENT AND LABOUR LAW

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

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ROMANIA
EMPLOYMENT AND LABOUR LAW

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

The reasons for terminating an employment by dismissal are limited and expressly provided by Romanian Labour Law: (i) reasons related to the employee and (ii) reasons not related to the employee.

The law expressly provides as reasons related to the employee: (a) *disciplinary infringement/s; (b) the employee is under pre-trial arrest or domicile arrest for more than 30 days;* (c) *physical or mental unfitness*; (d) *professional unfitness*.

As regards the reasons not related to the employee, the law expressly provides the removal of the employee's position, which has to be effective (i.e., removed from the employer organizational matrix) as well as real and serious (i.e., all grounds of the removal to be objective and not linked to the employee, but to the position occupied by the employee).

2. 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 the removal of the employee's position may be either individual or collective. The number of employees to be terminated determines whether the collective redundancy procedure should be followed. As such, a collective redundancy implies the termination of employment within a period of 30 calendar days, for one or several reasons not related to the employee, of:

- at least 10 employees for employers having more than 20, but fewer than 100 employees;
- at least 10% of the employees, for employers having at least 100 employees, but fewer than 300 employees; and
- at least 30 employees, for employers having at least 300 employees.

The law expressly provides for a specific procedure that the employer is obligated to follow in case of collective dismissal (please see the answer to question 7 below).

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

When the business sale falls under transfer of undertakings regulations, the Romanian Labour Law expressly prohibits dismissal due to such a transfer; otherwise it is allowed (e.g., in case of transfer of shares).

4. 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?

The minimum notice period under the law in case of employment termination at company's initiative for reasons not related to the employees is 20 business days. However, the parties may negotiate a higher notice period under the employment contract.

As an exception from the above, disabled persons dismissed by their employer for reasons not related to them benefit from a minimum notice term of 30 business days.

5. Is it possible to pay monies out to a worker to end the employment relationship

instead of giving notice?

Paying a worker to end the employment relationship instead of giving prior notice is not allowed by the Romanian Labour Law. Moreover, the employment agreement remains enforceable during entire notice period, under the same terms and conditions.

6. 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?

Garden leave is not regulated by Romanian law. Although in practice the employer may allow the employee not to come to work during the prior notice period while continuing all payments towards the employee, the employer may not prohibit the employee to come to work. In lack of parties' mutual consent, the employee might claim a breach of the right to work and related damages, as well as to be allowed to work until the employment agreement is terminated.

7. 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.

Preliminary step. Assessing whether the envisaged measure triggers the obligation to follow the collective dismissal procedure or the individual one, as well as the grounds leading to the removal of the concerned position/s.

Individual dismissal for reasons not related to the employee

- Issue the corporate decision approving the restructuring of the employer's activity based on the above assessment from the preliminary step.
- Issue and communicate to the concerned employee/s a prior notice letter, providing the prior notice term.
- Issue and communicate to the concerned employee/s the individual dismissal decision.

Collective dismissal for reasons not related to the employee

i. Approving the intention to collectively dismiss employees through the employer's specific corporate body;
ii. Preparing the first written notification on the employer's intention to proceed with a collective dismissal (i.e., *First Notification)* and sending it to employees' representatives/ trade union existent at the level of employer;
iii. Sending a copy of the First Notification to the authorities expressly provided by law (i.e., Territorial Labour Inspectorate and Local Employment Agency);
iv. Conducting consultations with employee representatives/trade unions (e.g., on finding ways to avoid collective dismissal; on solutions to decrease the number of employees envisaged to be dismissed; on ways to diminish the dismissal's consequences by social measures like professional re-qualification or reconversion of the employees);
v. Approving the collective dismissal and implementation measures;
vi. Preparing the second written notification on the employer's final decision on the collective dismissal (i.e., *Second Notification)* and sending it to employees' representatives/ trade union existent at the level of employer;
vii. Notifying the authorities expressly provided by law (i.e., Territorial Labour Inspectorate and the Local Employment Agency) by communicating the Second Notification on the final decision of the employer regarding collective dismissal;
viii. Preparing the prior notice and communicating it to the employees; and
ix. Preparing the individual dismissal decisions and communicating it to the employees.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

Non-observing the dismissal procedure may trigger the annulment of the dismissal decision; reinstating the parties in the previous situation, by reinstating the dismissed employee in the position held prior to dismissal; obliging the employer to pay a compensation equal with the indexed, increased and updated salaries and with the other rights that should have benefited during the period from the date of dismissal until the reinstatement, as well as moral damages, if requested, in case of a court claim.

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

The Romanian Labour Law does not provide statutory compensatory payments in case of dismissal for reasons not related to the employees. However, the employees dismissed for reasons not related to them may benefit from a compensatory package if provided under such collective bargaining agreement. The collective bargaining agreement may also regulate longer notice period as well as other benefits at termination in this case, as well as tiebreaker criteria in case two or more individuals hold the same position to be cancelled.

10. 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?

As anticipated in the answer at question 7, the Local Employment Agency and the Territorial Labour Inspectorate have to be involved in the collective dismissal for reasons not related to the employees. More specifically, the employer has to send a copy of the First Notification (i.e., on employer's intention to proceed with a collective dismissal), as well as the Second Notification to the Local Employment Agency and to the Territorial Labour Inspectorate within the legal terms and with the specific content required by the law.

The First Notification should provide:

- the total number of employees at employer level and their categories;
- the reasons for the envisaged collective dismissal;
- the number and categories of employees to be dismissed;
- the criteria used to select employees for dismissal;
- the measures envisaged by the employer in order to limit the number of dismissals;
- the measures envisaged by the employer to mitigate the consequences of the collective dismissal, including the compensation to be granted to the dismissed employees;
- the start date of the dismissals, or the period over which they will be implemented;
- the time limit within which the trade union/or employee representatives can make proposals for avoiding/ reducing the envisaged dismissals.

The Second Notification should provide, in addition to the above, the results of the consultation with employees' representatives/trade union.

As underlined under answers to question 8 above, non-observing the above procedure may trigger the annulment of the dismissal decision; reinstating the parties in the previous situation, by reinstating the dismissed employee in the position held prior to dismissal; obliging the employer to pay a compensation equal with the indexed, increased and updated salaries and with the other rights that should have benefited during the period from the date of dismissal until the reinstatement as well as moral damages, if requested, in case of a court claim.

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

The principle of equal treatment towards all employees and employers is applicable to employment relations.

Any direct or indirect discrimination against an employee, discrimination by association, harassment or victimization, based on the criteria of race, nationality, ethnicity, colour, language, religion, social origin, genetic traits, sex, sexual orientation, age, disability, chronic non-communicable disease, HIV infection, political choice, family situation or responsibility, union membership or activity, membership in a disadvantaged category is prohibited.

The right to protection against illegal dismissals is expressly recognized by law to all employees who perform a work.

More specifically, the law expressly provides that it is forbidden to dismiss employees (i) on the basis of race, nationality, ethnicity, colour, language, religion, social origin, genetic traits, sex, sexual orientation, age, disability, chronic non-communicable disease, HIV infection, political choice, family situation or responsibility, affiliation or activity trade union, belonging to a disadvantaged category, (ii) for exercising the right to strike and of trade union rights and (iii) for exercising the rights recognised under the law.

12. What are the possible consequences for the employer if a worker has suffered

discrimination or harassment in the context of termination of employment?

An unlawful dismissal based on discrimination or harassment acts may lead to the annulment of the dismissal decision; to the reinstatement of the dismissed employee in the position held prior to dismissal; obliging the employer to pay a compensation equal with the indexed, increased and updated salaries and with the other rights that should have benefited during the period from the date of dismissal until the reinstatement, as well as moral damages, if requested, in case of a court claim.

The court may also order that (i) the employer bears the costs of psychological counselling that the employee needs, for a reasonable period set by the occupational physician and/or (ii) the functioning authorization be withdrawn/suspended, in the case of legal entities.

In terms of liability, the employer may be sanctioned with administrative fines up to 200,000 RON (approx. 40,000 EUR).

13. 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?

Employees are entitled to specific protection and against dismissal, inter alia, in the following cases:

- during medical leave;
- during child-care leave;
- during care leave for sick child;
- during annual holiday paid leave;
- during pregnancy;
- during maternity leave;
- during the period the employee is in receipt of reinsertion allowance;
- during quarantine.

The above prohibitions are not applicable in the cases where the dismissal results from the employer's bankruptcy, judicial reorganization (a restructuring or liquidation procedure ordered by a court) or dissolution of the employer.

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

Law no. 361/2022 on the protection of whistle-blowers in the public interest, transposing into national law the provisions of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of individuals who report infringements of Union law, provides for special protection measures that may be taken regarding the persons reporting breaches of the law which have occurred or are likely to occur, within authorities, public institutions, other legal persons under public law, as well as within legal persons under private law.

Thus, the law explicitly prohibits any retaliatory measures against whistle-blowers, including suspension or termination of their employment contracts, disciplinary sanctions, any act of workplace harassment or unequal treatment, requiring a psychiatric or medical evaluation etc.

If any of the actions taken against whistle-blowers are found by the courts to be retaliatory and therefore unlawful, employers may be forced to: immediately stop any retaliation, reinstate whistle-blower to his/her previous situation, compensation for damages, termination of the measure and prohibition of the measure in the future.

Furthermore, the whistle-blower may benefit of free legal assistance by the Bar Association, upon request.

15. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

Employers may undoubtedly dismiss employees for reasons not related to their person, as in the case of financial difficulties, as long as such reasons may be framed as being real and serious.

However, dismissing an employee on such grounds means by principle that such position is cancelled; therefore offering re-engagement on new less favourable terms subsequent to a dismissal may be flipped on the employee's side in case of a challenge in court, as the offer may constitute a proof that the position was not cancelled in reality by the employer.

Also, in case of a collective redundancy, reinstating the previously cancelled position obliges the employer by law to re-hire the dismissed employee on that position,

subject that the reinstating is done in a 45 day term from the moment of the dismissal.

Even so, an offer of amendment of the individual employment agreement may be made by the employer prior to commencing the dismissal procedure.

16. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

In case of recruitment, the type and/or amount of information to be fed up or used by an AI software should be assessed further to a fact-specific analysis so that to limit to check the professional and personal aptitudes of the candidates and to ensure the compliance with the non-discrimination and equal treatment principles.

Furthermore, in case the selection implies also background checks with the previous employers, the Romanian Labor Code expressly requires the employer to inform the candidate prior to address any query to former employers and limits such checks to: (i) job activities carried out by the envisaged candidate and (ii) employment period.

In case of terminations, use of AI should be very carefully assessed also on a fact-specific analysis. Depending on the termination type, for reasons pertaining or not to the employee, applicable conditions need to be observed as per the law.

By example, in case of a termination for reasons not related to the employee, the real and serious causes that led to the need to cancel the position will be analysed by a court of law. In case such analysis is made by an AI prior to the dismissal, and not by the employer's management, there are high chances for annulment of the decision to terminate employment.

Also, in case of disciplinary terminations use of AI may lead to annulment in court of the decision, as the objective/subjective side of the deed, the proportionality of the sanction are to be analysed by the employer's management.

Up to this point, there is no public-known case law regarding claims on an employer's use of AI or automated decision-making in the termination process.

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

As a general rule, the Romanian Labour law makes no requirements for the employer to pay compensation upon termination of employment by dismissal.

As an exception, compensations are mandatory to be paid to employees in case of dismissal due to physical or mental unfitness.

However, the employee might receive compensatory payments either in dismissal cases, others than the above ones, or in case of termination by mutual consent of the parties if such benefits are provided under internal regulations, applicable collective bargaining agreement or under the individual employment agreement, as the case may be.

The value of compensatory payments is not provided by the law. As such, it is either at the level provided under internal regulations, under applicable collective bargaining agreement, under the individual employment agreement, as the case may be, or freely established based on criteria like seniority, position, etc.

18. 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, in what form, should the agreement be documented? Describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

Although the employee and the employer may agree to terminate the employment agreement by their mutual consent, the Romanian Law expressly provides that employees may not waive their rights recognized by law and any transaction aimed at waiving/limiting employees' rights recognized by law to them shall be null and void.

As an exception, the law expressly provides that at the conclusion of the employment agreement or during employment, the parties may conclude a non-compete convention (written form is mandatory). Also, the parties are expressly allowed to agree over a confidentiality clause aimed at regulating, during and after employment, the non-disclosure of information found out as employee.

19. 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-compete restriction may be agreed upon for a maximum of two years as of the termination of the employment contract and it has to observe the mandatory terms and conditions expressly provided by law in order to be applicable and not to absolutely limit the right to work of the former employee.

For the period of the non-compete restriction the law expressly requires the employer to pay a monthly non-compete indemnity to the former employee consisting in at least 50% of the average monthly salary of the employee in the six months before termination of the employment agreement. The breach of such an obligation may trigger the liability of the employee for incurred damages and the return of the non-compete allowance.

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

Any employer may agree with an employee on an obligation for the latter to keep information relating to the employer confidential, both during and after the termination of employment. The breach of such an obligation may trigger the liability of the employee for incurred damages.

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

The information requested, in any form, by the employer to the candidate to employment on the occasion of the prior verification of the aptitudes cannot have a purpose other than that of assessing the capacity to occupy the respective position, as well as the professional aptitudes.

The employer may request information regarding the candidate to employment from his former employers, but only regarding the activities performed and the duration of employment and only with the prior notification of the candidate.

22. 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?

Cases of termination by dismissal and related procedure are expressly regulated by the law. In such a context, in order to mitigate the difficulties they may face, employers should consider inter alia, the following:

- Proper identification of the grounds of the dismissal (e.g., to assess if it is a disciplinary case or a poor performance case)
- Follow the legal procedure for the specific case (e.g.; preliminary disciplinary investigation; prior evaluation for professional unfitness etc.);
- Proper documentation for the dismissal case (e.g., to have justifying documents proving the grounds for removing a specific position);
- Having internal documents properly concluded/implemented (e.g., collective bargaining agreement; internal regulations, etc.);
- Having a proper employment file for each employee, etc.

23. Are any legal changes planned that are likely to impact 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?

As of today, there are no specific legal changes in relation to termination of employment envisaged to enter into force.

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