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New Updates in Employment and Labour Law in Romania – November 2022

This newsletter highlights new developments in employment and labour law in Romania, namely:

- ✓ new rules regarding the employment of foreign nationals in Romania;
- ✓ reinstating the obligation to draw up internal rules and job descriptions for all employers, regardless of their legal form;
- ✓ ECHR judgment in Moraru vs. Romania case: a height requirement in the recruitment process is discriminatory;
- ✓ online access for employees or former employees to data from the general register of employees;
- ✓ amendment of the amount of the unemployment allowance.

I. New rules regarding the employment of foreign nationals in Romania



Since when?

As of **28 October 2022**, Government Emergency Ordinance no. 143/2022¹ entered into force, amending the provisions of Government Ordinance no. 25/2014² regarding the employment and posting of foreign nationals on the territory of Romania and establishing **additional rules for foreign-national workers**.

The regulation aims to protect the initial employer who carried out all necessary steps to obtain the employment permit and who incurred the corresponding costs by introducing additional conditions for changing jobs in case of foreign-national employees.

Thus, the legislator wants to encourage a unitary workflow at the national level, given that incorrect practices were observed on the labour market, which frequently appeared when a foreign national was employed by another employer other than the one that obtained the initial or previous employment permit.



To whom do the new rules apply?

The new regulations target **foreign nationals employed based on an employment permit**.

Exempted categories: seasonal workers.



What are the new rules?

The **following conditions** are introduced if the foreign national employed based on a work permit wants to take a new job with another employer:

➤ the new work permit will be issued to **the other employer**, provided that all general, and if required, special conditions provided by the legislation for issuing such a notice are met; Note: if the new employment notice is issued **to the same employer**, it is not necessary to fulfil all the general, and if required, special conditions provided by the legislation, as an easier procedure is provided.

➤ if **less than 1 (one) year** has passed from the moment of registration of the individual employment agreement concluded with the previous employer, **the written consent of the previous employer is required** to take a new job with another employer. The written agreement of the previous employer must be submitted to Romania's General Inspectorate for Immigration.

Exceptions: **the previous employer's agreement is not required** if the termination of the employment agreement occurred in any of the following situations:

- at the initiative of the employer,
- by mutual agreement of the parties, or
- by the foreign national's resignation, if the employer has not fulfilled the obligations assumed under the individual employment agreement.

➤ for the issuance of the new employment permit, the **criminal record** of the foreign national issued by the Romanian authorities must also be submitted.

1. Government Emergency Ordinance no. 143/2022 for the amendment of Article 17 of Government's Ordinance no. 25/2014 regarding the employment and posting of foreigners on the territory of Romania and for the amendment and completion of some normative acts regarding the regime of foreigner nationals in Romania, published in the Official Gazette no. 1049/28.10.2022

2. Government Ordinance no. 25/2014 regarding the employment and secondment of foreigners on the territory of Romania and for the modification and completion of some normative acts regarding the regime of foreigner nationals in Romania, published in the Official Gazette no. 640/30.08.2014.



Our recommendations

We recommend employers who wish to hire or terminate the employment of foreign-national employees to carefully consider each particular situation, as they may be subject to additional legal obligations, including formalities with the General Inspectorate for Immigration.

II. Reinstating the obligation to draw up internal rules and job descriptions for all employers, regardless of their legal form



Since when?

As of **6 October 2022**, following the entering into force of Law no. 275/2022¹, Government Emergency Ordinance no. 37/2021² was repealed, and therefore the derogations for micro-enterprises with regard to drawing up internal rules, job descriptions and time records are no longer applicable.



What obligations have been reintroduced?

- **the obligation to draw up the internal regulation** at the level of the micro-enterprise— the employer has the obligation to communicate it to the employees, producing effects towards the employees from that moment;
- **the obligation to draw up the job description to specify the attributions of employees of micro-enterprises:** Thus, micro-enterprises will no longer be able to specify the duties of employees verbally.
- **the obligation to keep records of the hours of work performed daily by each employee, highlighting the hour of beginning and ending of the work schedule**, as well as submitting this record to the labour inspectors, whenever this is requested. Previously, micro-enterprise employers had the possibility to keep track of the hours of work performed daily by each employee under the conditions established with them by written agreement, as the Labour Code³ provides for mobile employees and employees who work from home.

For a period of 1 year and 5 months, micro-enterprises were exempted from the above obligations, during the period that Government Emergency Ordinance no. 37/2021 was in force.



Our recommendations

We recommend that employers draw up their internal regulations and job descriptions with increased diligence, as failure to include the mandatory information required by law may lead to administrative and pecuniary liability.

1. Law no. 275/2022 regarding the repealing of Government Emergency Ordinance no. 37/2021 for the amendment and completion of Law no. 53/2003 - Labor Code, published in the Official Gazette no. 961/03.10.2022.
2. Government Emergency Ordinance no. 37/2021 for the amendment and completion of Law no. 53/2003 - Labour Code, published in the Official Gazette no. 474/06.05.2021.
3. Law no. 53/2003 - The Labour Code, republished in the Official Gazette no. 345/18.05.2011.

III. ECHR judgment in Moraru vs. Romania case: height requirement in the recruitment process is discriminatory

In its **Judgment of 8 November 2022**, in *Moraru vs. Romania* (Application No. 64480/19), the European Court of Human Rights (ECHR) ruled that there had been a violation of Article 14 (prohibition of discrimination) in conjunction with Article 2 of Protocol No. 1 (right to education) of the European Convention on Human Rights, for which Romania must pay the applicant EUR 7,500 as non-pecuniary damage.



What has the ECHR ruled?

The case concerned an allegation of discrimination in the admission procedure to become a military doctor. Specifically, in 2018, the Romanian authorities refused to allow the applicant to attend the admission exam to the military medical school because of her size. The applicant was 150 cm tall and weighed 44 kg. The Ministry of National Defence (MND) argued that the law required all military personnel to carry out any mission, and that this included the possibility of carrying a standard soldier's kit weighing approximately 57 kg.

Given the facts of the case, the Court found that the reasons why the applicant was treated differently from other women who met the weight and height requirements were not "relevant and sufficient". In essence, the Court found that the national courts relied solely on the MND's arguments and provided **no justification as to the link between an applicant's size and strength**. In particular, the national courts did not carry out any assessment of the merits of the MND's claims. In addition, national courts did not base their decisions on any studies, research or other empirical evidence.



Our recommendations

Both at the national and international level there is a major concern to combat discrimination, which is reflected in several normative acts. The penalties applicable in the event of potential discrimination are extremely high, so preventive measures (such as the implementation of specific rules through internal rules or other relevant internal policies) are essential to address and prevent discrimination at the workplace.

IV. Online access for employees or former employees to data from the general register of employees



Since when?

On **31 December 2024**, Government Decision no. 1164/2022¹ will enter into force and the online access procedure for employees or former employees to data from the general register of employees will be applicable.

Thus, **in practice, as of 2025**, the date by which a new IT system will be implemented for the general register of employees², employees or former employees will be able to access online the data related to the activity performed at different employers, based on an individual employment agreement.

1. Government Decision no. 1164/2022 regarding the approval of the Procedure for online access of employees or former employees to data from the general register of employees, the method of generating and downloading the extract, as well as the conditions under which the extract can prove the seniority and/or specialty, published in the Official Gazette no. 937/26.09.2022.

2. According to the press release of the Ministry of Labour and Social Solidarity from 21 September 2022, the new REGES IT system is provided for in the National Recovery and Resilience Plan, the Labour Inspectorate being the beneficiary of the funding of Investment 6 - Digitisation in the field of labour and social protection, related to component C7 - Digital transformation.



What information will employees be able to access?

The access right of employees will be limited to their own data concerning the activity performed under the individual employment agreements, namely:

- viewing, downloading and printing this data, as well as
- generating and downloading a certificate/excerpt from the register.

The extract generated online from the register and assumed by the employer (by holographic or electronic signature) will represent proof of seniority and specialty, activity carried out, duration of activity and salary.



In the meantime...

Until the date that the new IT system is functional, the territorial labour inspectorates have the obligation to issue to employees a certificate/excerpt that reflects the activity performed on the basis of an individual employment contract.

This certificate/excerpt will be issued within 15 days at the latest from the date of registration of the employee's written request, with the payment of a fee of RON 20 (*approx. EUR 4*) being required.

We also remind employers that, at the written request of the employee or a former employee, they are obliged to issue the employee with an extract from the register, dated and certified for conformity, or a certificate attesting to the activity carried out by the employee, the duration of the activity, the salary, seniority in the job and in the speciality, as shown in the register and in the personal file, within a maximum of 15 days from the date of the request.

V. Amendment to the amount of unemployment allowance



Since when?

As of **3 October 2022**, Law no. 273/2022¹ entered into force, establishing **an increased amount** for the unemployment allowance.

The unemployment allowance will be granted monthly and in a differentiated way, depending on the contribution period, being equal to the value of the reference social indicator in force on the date of its establishment, for people with a contribution period of at least one year.

Previously, the unemployment allowance was in the amount of 75% of the value of the reference social indicator.



How much is the unemployment allowance now?

Until 1 March 2023, the value of the reference social indicator is **RON 525,5** (*approx. EUR 106*).

1. Law no. 273/2022 for the amendment of art. 39 para. (2) from Law no. 76/2002 regarding the unemployment insurance system and the stimulation of employment, published in the Official Gazette no. 954/30.09.2022

Afterwards, in accordance with Law no. 76/2002, the value of the reference social indicator will be updated annually, on 1 March, with the average annual inflation rate from the previous year and definitive indicator as communicated by the National Institute of Statistics.

The minimum period of contribution required to obtain the unemployment allowance remains at least one year.



Our recommendations

Establishing the amount of unemployment allowance can be an essential tool for employers when they intend to terminate an employee's work relationship. Depending on the amount of the unemployment benefit, an appropriate compensation package can be determined in order for the employee to sign a mutual termination agreement and thus minimise the legal risks of a potential dismissal.



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