

## Cover article: "Major Amendments of the Romanian Labour Code"

by Mihaela Baloi, Associate

This month's cover article provides you with a summary of the most important changes introduced by the newly amended Romanian Labour Code, which changes will enter into effect as of April 30, 2011, affecting some of your company's human resources activities, mainly those related to aspects such as trial periods, fixed-term labour agreements, temporary employment agencies, night shift incentives, internal regulations, or non-compliance sanctions.

## Legislative Retrospective

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company's activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in the following areas:

- Capital Markets
- Dispute Resolution
- Insurance
- Pensions



## + VF News

- Voicu & Filipescu was awarded Law Firm of the Year 2010 in Competition Law title at Avocatnet Awards Ceremony on April 13, 2011. An independent jury recognized the firm's valuable involvement in a series of high profile competition projects on the market, as well as its general activity in competition law.
- Voicu & Filipescu's Growth Catalysts program won the Best Legal Internship Program of the Year award at Avocatnet Awards Ceremony, with a category jury formed of law students commending the program's potential.
- Interview with Partner Raul Miha on competition law, recently published by legalmarketing.ro.

## WILL THE AMENDMENTS OF THE ROMANIAN LABOUR CODE LEAD TO BALANCE ON THE LABOUR MARKET?

The Labour Code has recently been amended and supplemented by the provisions of Law no. 40 of March 31, 2011 (the "**Law on the Labour Code Amendment**"), published in the Romanian Official Gazette no. 225 of March 31, 2011.

Said amendments of the Labour Code will enter into force 30 days after their publication in the Official Gazette, i.e. on April 30, 2011 and refer mainly to aspects such as trial periods, fixed-term labour agreements, temporary employment agencies, night shift incentives, internal regulations, or non-compliance sanctions.

Please find below a summary of the most important changes introduced by the newly amended Romanian Labour Code.

- (1) **Individual performance objectives and criteria for the appraisal of employees' professional activity have been introduced**, based on which the dismissal of an employee can be decided on grounds of professional unfitness.
  - (a) **Individual performance objectives.** A new prerogative has been added to the rights of the employers, namely to set up individual performance objectives.

In collective dismissal proceedings the criteria for setting up the termination ranking would be applied in order to categorize the employees, following the appraisal of the individual performance objectives.
  - (b) **Professional appraisal criteria and appraisal procedure.** The selected candidate needs to be informed upon employment of the employee professional activity appraisal criteria applicable by the employer.

Said criteria also need to be expressly stipulated in the individual labour agreement. In order to amend such criteria, an addendum to the individual labour agreement must be concluded, thus the employee's prior consent is needed to such end.

Also, the criteria and procedure for the employees' professional appraisal must be expressly set forth in the employer's internal regulations.

Given employers' actual need of controlling and rendering efficient their internal business activity, it is important to set up performance objectives and especially clear criteria based on which employers can appraise their employees' professional activity.
- (2) **Requesting referrals from former employers.** The employer may request information on the candidates from their former employers, however such referrals need to be limited to their activity and length of employment, while said request cannot be made unless the candidates are previously informed to such end.
- (3) One of the most criticized amendment of the Labour Code refers to the **extension of the trial period** up to 90 days in the case of non-managerial positions (compared to 30 days in the

current legislation) and 120 days in the case of managerial positions (compared to 90 days in the current legislation). The main criticism against said changes refers to the possibility of terminating the labour agreement during the trial period, by means of a notice in which the parties need to give reasoning for such termination. While this possibility also existed prior to the amendment of the Labour Code, the previous legal provisions did not stipulate the term of "ungrounded".

The possibility has also been introduced of hiring more than three individuals on the same job for successive trial periods throughout a maximum 12 months term, while the maximum trial period for non-qualified workers has been eliminated.

We believe that the length of the trial period is beneficial for both parties, as it allows to the employees to get familiar with their job and co-workers, and also to the employers to get to know their future employees better.

- (4) **Temporary transfer.** Employees temporary transfer can be decided for a term of no more than 60 calendar days throughout a 12 months period (the 12 months period was not provided by the previous form of the Labour Code), which can be extended for more consecutive periods of maximum 60 calendar days, however only upon the employee's consent. According to the previous form of the Labour Code, the temporary transfer period could only be renewed once.
- (5) An amendment which we consider to be useful is that the possibility has been clearly set forth for an employee to hold more than one job with the same employer, with distinct individual labour agreements concluded and respective salaries paid to the employee for each individual job position.
- (6) A new option has been introduced for the case when employers, **due to economic or technological reasons, implement business activity retrenchment measures for a time period of more than 30 days, namely they can reduce the working schedule from five to four days a week, with a proportional salary cut**, until the moment when the situation having caused such working schedule ends, following prior consultation with the relevant trade unions or employees' representatives, as the case may be. Also, individual labour agreements can be suspended throughout the employer's business activity downsize. It is our opinion that said measure will be useful to those employers whose business activity faces either temporary increases or temporary downsize, such as the sale of seasonal products.
- (7) As regards **fixed-term labour agreements**, the maximum term for which such can be concluded has been increased from two to three years, while the possibility has been introduced of further extending said agreements to cover the duration of a project, program or work. Also, the obligation has been eliminated of concluding an undetermined labour agreement after the termination of the third consecutive fixed-term labour agreement.
- (8) **Temporary employment agencies.** The temporary work assignment can be decided for a time period of no more than 24 months (compared to 12 months, previously). The term of such temporary work assignments can be prolonged for consecutive terms which, when added to the initial term, cannot exceed a total term of 36 months.
- (9) **Maximum working hours.** The statutory working hours may not exceed 48 hours a week,

overtime included. As an exception, the maximum working hours may be extended over said 48 hours a week, provided that the average number of hours of work during a referral period of 4 calendar months does not exceed 48 hours a week. In the case of certain activities or professions provided by the collective bargaining agreements, referral periods of more than four months, however not more than six months, can be decided under the collective bargaining agreements.

- (10) A controversial change, which has been highly criticized by the media, refers to **increasing the referral period for which the average overtime is calculated**, namely from three to four months. This does not mean however that the statutory working hours of 8 hours a day, i.e. 40 hours a week have been amended.

Also referring to overtime, such can be compensated with paid time off, which needs to be taken within a 60 days period following the date of the overtime, compared to the 30 days term previously set forth by the Labour Code.

As a novelty, the possibility has been introduced of granting paid days off throughout the duration of business activity retrenchment, with said subsequently compensated by overtime.

- (11) A major change refers to the **notice periods**. In case dismissals are decided for reasons non-imputable to the employee, said notice period has **increased to 20 days, compared to 15 days** as previously provided by the Labour Code. Nonetheless, the National Collective Bargaining Agreement in force until December 31, 2010 stipulated that employers were compelled to grant 20 working days notice periods.

In the case of resignation, the notice period cannot exceed 20 working days in the case of employees occupying non-managerial positions and 45 working days in the case of employees occupying managerial positions. However, by introducing a 45 days notice period in the case of managerial positions an unbalance is created, while in the case of such employee being laid-off the notice period given by the employer is of only 20 working days.

- (12) As regards **collective layoffs**, by the recent amendments of the Labour Code the possibility has been introduced for the employer to apply social criteria for selecting employees only after appraising the achievement of the performance objectives. Also, the interdiction for employers having decided collective layoffs to recall dismissed employees has decreased from nine months to 45 days from the date of such dismissal. Thus, within 45 days from the date of the layoff, the employee made redundant is entitled to be reinstated, and takes priority before other candidates, on the job position restored for the same activity, with no need for said former employee to take any exam, competition or trial period. Also, the period in which the employees recalled to work have the right to accept the reinstatement has decreased from ten to five calendar days.
- (13) **Night shift allowance**. By the Law on the Labour Code Amendment, the night shift allowance has been increased from 15% to 25%, in case such work time amounts to at least three hours of night work out of the normal working hours.
- (14) Another significant amendment of the Labour Code refers to **taking a continuous vacation of at least 10 working days** within a calendar year (compared to 15 calendar days in the previous

regulation).

- (15) Employers and employees are now free to decide, by concluding an addendum to the individual labour agreement, the period in which the employee having benefited of professional training is forbidden from terminating the employment contract. The employee will benefit from all its employment rights in case of professional training established by the employer, regardless of the effective duration of the professional training.
- (16) **Disciplinary sanctions.** The disciplinary sanctions are erased by law after 12 months from the moment when they are applied, provided that the employee to whom such refer is not sanctioned for disciplinary reasons within such term. The employer shall issue a written decision mentioning the erasure of any disciplinary sanction.

There represents felony punishable by imprisonment from one to two years or by criminal fine employers' acceptance of more than five individuals to work without concluding individual labour agreements with such, irrespective of said employees' citizenship.

There represents felony punishable by imprisonment from six months to one year or by criminal fine one's action of repeatedly establishing for one's employees hired under individual labour agreements salaries that are below the statutory gross minimum salary applicable nationwide.

The court of justice may also decide for one of the following additional sanctions to be applied:

- (a) total or partial loss of an employer's right to benefit from public services, aid or subsidies, including EU funds managed by the Romanian authorities, for a period of up to five years;
- (b) employer's interdiction to participate in the award of a public procurement contract for a period of up to five years;
- (c) full or partial recovery of public services, aid or subsidies, including EU funds managed by the Romanian authorities granted to the employer for a period of up to 12 months before committing the offence;
- (d) temporary or definitive closedown of the working point(s) where an offence has been committed or temporary or definitive withdrawal of an operating license if justified by the gravity of the offence.

We have also included below a series of other important amendments of the Labour Code:

- the disciplinary sanction has been eliminating of suspending individual labour agreements for a period of at the most ten working days;
- in case of employment of more than 5 employees without a valid employment agreement, the employer will be compelled to pay all duties and taxes to the state budget and delay penalties incurred thereof, that would have been payable in case employment agreements had been concluded in accordance with the laws;
- the individual labour agreement is terminated by law in case the employer which is a legal entity is dissolved, from the moment of said dissolution (this provision had also existed in a previous regulation before 2006), as well as at the moment of cumulative fulfilment of the standard

tenure conditions and minimum retirement contribution;

- new sanctions have been set forth in case of failure to comply with legal obligations, such as non-compliance with the obligation to keep records of working time or failure to register employees' resignation or in case of employees being hired without prior medical certificates.

The amendments introduced to the Labour Code are beneficent, as they are meant to render flexible and to encourage the business environment, while also creating a more secure setting for the labour market players, both the employers and the employees. The former Labour Code included a set of provisions that needed to be eliminated, as they were obsolete. This aspect was favourable mostly to employees and it is only now that the balance between employees and employers has finally been set. The practice will further demonstrate if these newly introduced changes will actually meet their purpose.

## capital market - legislative retrospective

**Regulation no. 3/2011** regarding the Accounting rules in compliance with 7th EEC Directive applicable to entities which are authorized, regulated and supervised by the National Securities Commission, published in the Official Gazette part I no.156 as of March 3, 2011.

**Regulation no. 4/2011** regarding the Accounting rules in compliance with 4th EEC Directive applicable to entities which are authorized, regulated and supervised by the National Securities Commission, published in the Official Gazette part I no.185bis as of March 16, 2011.

## dispute resolution - legislative retrospective

**Decision of the Chamber of Commerce and Industry of Romania**, published in the Official Gazette of Romania, Part 1 of March 4, 2011 on the amendment and supplementing of the Procedural Rules of the Court of International Commercial Arbitration and on the approval of the Rules **on the organization and operation of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania**. One of the main amendments introduced by said Decision refers to the fact that the evidences requested under the claimant's application need to be described by mentioning, as the case may be, the documentation and importance thereof, the name and address of the witnesses and actions that need to be proven, the objectives of the expertise and designated counseling expert, the questions to be asked during the cross examination, in the case of legal entities. Also, the Decision provides that the application and appendixes thereof are to be submitted in as many copies as necessary in order to be filed with the case file and sent to the other party and each of the arbiters. In the case of the arbiters, such copies are to be sent in electronic format.

## insurance - legislative retrospective

**Insurance Supervisory Commission** has approved **Order no. 5/2001**, published in the Official Gazette part I no.185 as of March 16, 2011, **amending and supplementing the Norms on preventive actions against money laundering and terrorism financing on the insurance market**, as approved by the ISC Order no. 24/2008. The internal procedures and norms on preventive actions against money laundering and terrorism financing shall be revised within 60 days as of the specific legislation changes and also based on new risks identification.

## pensions - legislative retrospective

**Private Pension System Supervisory Commission** has approved **Norms no. 1/2011 regarding the merger of voluntary pension funds**, published in the Official Gazette Part 1 no. 151 as of March 2, 2011, regulating the merger procedure and the documentation necessary for merger authorization.

Private Pension System Supervisory Commission has approved **Norms no. 2/2011 regarding the subscription and evidence of the participants to the voluntary pension funds**, published in the Official Gazette part I no. 151 as of March 2, 2011, regulating the subscription and exit conditions for the participants to the voluntary pension fund.

**Norms in application of Law 263/2010 regarding the public pension unitary system**, published in the Official Gazette part I no. 214 as of March 28, 2011.

For more information about the above, please contact:

Daniel Voicu: [daniel.voicu@vf.ro](mailto:daniel.voicu@vf.ro)  
Mugur Filipescu: [mugur.filipescu@vf.ro](mailto:mugur.filipescu@vf.ro)

26-28 Stirbei Voda Street  
Union International Center II  
5<sup>th</sup> floor, 010113 Bucharest  
ROMANIA  
Tel: +40 21 314 0200  
Fax: +40 21 314 0290  
[www.vf.ro](http://www.vf.ro)

