

## employment - legal changes published in March 2017

**Law no. 16/2017 concerning the posting of workers in the transnational provision of services** was published in the Official Gazette of Romania, Part I, no. 196 of March 21, 2017.

The law establishes a common framework of rules, measures and control mechanisms applicable to posting of workers in the transnational provision of services, including measures to prevent and punish any abuse or circumvention thereof. The law does not affect the exercise of fundamental rights as recognized in national legislation and at EU level, including freedom and the right to strike or to take other actions covered by labor relations, in accordance with national legislation.

The provisions of Law no. 16/2017 apply to:

- enterprises established in a Member State other than Romania or on the territory of the Swiss Confederation which, in the provision of transnational services, post on Romanian territory employees under labor relations with them;
- enterprises established in Romania which, in the provision of transnational services, post on the territory of a Member State other than Romania or on the territory of the Swiss Confederation employees under labor relations with them.

The law does not apply to ship personnel of trading navy enterprises.

The new law provides that throughout the period of posting, the employees will retain direct employment relationship with the employer who posted them. Also, employees posted in Romania within the transnational provision of services shall, whatever the law applicable to the employment relationship, benefit from the working conditions provided by the Romanian legislation and / or collective agreement concluded at sectoral level, applicable by extension to the whole sector, as required by law, on: (i) the maximum working time and minimum periodical rest; (ii) minimum paid annual holidays; (iii) the minimum wage, including overtime compensation or payment; (iv) the conditions of availability of workers by temporary employment agencies; (v) labour health and safety; (vi) protective measures with regard to working conditions for pregnant women or those who have recently given birth, and for children and youth; (vii) equality of treatment between men and women and other provisions on non-discrimination.

It is also provided that any specific indemnity for transnational posting is considered to be a part of the minimum wage, to the extent it is not granted as compensation for expenses generated by posting, namely travel, accommodation and meals. If the Romanian legislation provides more favorable working conditions than those provided in the member state or the Swiss Confederation, on the territory of which the Romanian workers are posted, Romanian law has priority.

It is important to mention that the employer of the posted worker bears direct liability for granting all employee's rights provided in the individual or collective employment agreement, having the following obligations towards the employee: (i) to pay any net outstanding compensation; (ii) to pay any retroactive amounts or reimbursements of tax or social security contributions, unjustifiably retained from their salary; (iii) to compensate the costs whose amount cannot be justified in relation to the net salary of the posted employee or to the quality of the accommodation, retained or deducted from salaries for the accommodation provided by the employer; (iv) to pay the contributions to mutual funds or institutions of social partners, unjustifiably retained from the posted employee's salary.

The new law takes effect on May 20, 2017, when the Law no. 344/2006 on posting of employees in transnational service provision is repealed.