

employment - legal changes published in November and December 2016

Government Decision no. 885/2016 amending and supplementing the Methodological Norms of applying Law no. 76/2002 on the unemployment insurance system and stimulation of employment and amending and supplementing procedures regarding access to measures to boost employment, funding methods and their implementation instructions was published in the Official Gazette of Romania, Part I, no. 979 of December 6, 2016.

Considering the changes brought by GEO no. 60/2016 regarding a number of benefits which unemployed and some graduates may receive as a result of employment, the new Decision aims to align these provisions by correlating and amending the Methodological Norms for the application of Law no. 76/2002.

Among others, the most notable changes are:

Unemployed persons earning income from certified activities - the unemployed (among those provided in art. 17 of Law no. 76/2002), deriving income from certified activities will be eligible for unemployment benefits as laid down by law, regardless of income, if they prove legal termination of said activity by law prior to applying for unemployment benefits.

The persons assimilated to those who do not earn any income – this category is supplemented with (i) persons who derive income representing non-compete allowance to be granted during the non-compete period, by the employer, after the termination of the individual employment contract, (ii) persons obtaining revenues, profit sharing, which is awarded by the employer to employees, directors or managers, after the termination of the individual employment contract or mandate contract or management contract, (iii) persons who derive income from salary received according to the law, during local elections, elections for the Senate and the House of Representatives and presidential elections.

Granting various bonuses – in addition to the amendments regarding the necessary documents for obtaining them, a series of additions are brought regarding each type of bonuses, namely:

- the activation bonus (amounting to Lei 500) – for receiving it, the unemployed should not have been awarded the activation bonus in the last 12 months; also, the activation bonus will not be received by people employed for a fixed-term for more than 3 months and subsequently to the fixed-term employment, the duration changes to exceed 3 months or becomes indefinite;
- employment bonus and installation bonus (mobility bonuses) - may be granted to the unemployed being hired, full time, for a period of at least 12 months and fulfilling the other conditions required by law; the mobility bonuses may be combined with other benefits (e.g., a percentage of the amount of unemployment benefit, the employment bonus granted to graduates, the activation bonus).

Law no. 220/2016 for supplementing par. (1) of art. 139 of Law no. 53/2003 - Labour Code was published in the Official Gazette of Romania, Part I, no. 931 of November 18, 2016

The law regulates the supplementation of the list containing non-working public holidays, provided in art. 139 par. (1) of Law no. 53/2003 - Labour Code, by introducing June 1st as a non-working public holiday.

Government Decision no. 877/2016 on amending and supplementing Government Decision no. 500/2011 on general registry of employees and for applying unitary legal provisions was published in the Official Gazette, Part I no. 963 of November 28, 2016

The Decision envisages establishing a new methodology of drafting, filling-in and submitting with the labor inspectorates of data in the general registry of employees. As the main element of novelty, the general registry of employees will be composed of two parts:

- a private registry, that registers individuals employed by concluding an individual labor contract according to Law no. 53/2003, which is drawn up, filled in and sent by employers, individuals or private legal entities; and
- a public registry, registering individuals paid from public funds, exercising a function under an individual contract of employment, an administrative appointment or of a different kind of deed issued under the law. This registry is drawn up, filled in and sent by public institutions/ authorities which are governed under provisions of the Framework Law no. 284/2010 regarding the unitary remuneration of personnel paid from public funds.

The data in the private/ public registry will be transmitted online on the portal of the Labour Inspectorate. Also, upon the written request of the employee or a former employee, employers are obliged to issue an excerpt from the private/ public registry, dated and certified for compliance or a certificate attesting the activity by them, the duration of activity, salary, seniority and specialty, as resulting from the private/ public registry and from the personal/ professional file, within 15 days as of the request.

Moreover, it expressly provides the right of every person to interrogate, request and obtain from the Labour Inspectorate data from the private/ public registry on the activity they performed as an employee/ individual paid from public funds, duration of activity, salary, seniority and specialty within 5 days of the request.

Also, this decision amends the regime of sanctions regarding the drafting, filling-in and submitting of the general registry of employees, establishing minimum (300 lei) and maximum values (20,000 lei) for the civil offences found.

Until the date of implementation of the new IT system for the private/ public registry, both employers natural or legal persons of private law and public institutions/ authorities will continue to apply the legal provisions regarding the obligation of filling in and sending to the territorial labor inspectorates the data in ReviSal, in accordance with Order no. 1918/2011.

New decisions relevant to labor law:

[Decision of the High Court of Cassation and Justice no. 17/2016 concerning the examination of complaints made by the Court of Appeals Constanta - Section I in civil cases no. 4024/118/2015 and 3927/118/2015, published in the Official Gazette of Romania, Part I, no. 993 of December 9, 2016.](#)

Under this decision, HCCJ established that a decision of the Court of Auditors issued in exercise of its control duties, which established that certain rights under the collective bargaining agreement concluded at a public institution financed wholly from own revenues were awarded unlawfully, in relation to the law on salaries in public institutions, *does not deprive, by its mere existence, of effects, the terms of the collective employment agreement by which those rights have been established, if a court has not found, under the law, their nullity.*

It was also established that the nullity of a clause of the collective bargaining agreement negotiated in breach of Art. 138 par. (1) - (3) of Law no. 62/2011 (on collective negotiation of salary rights in the public sector) *can be requested by interested parties, either by action or by way of exception, and it may be invoked by the court ex officio, during the existence of the collective bargaining agreement.*

[Constitutional Court Decision no. 681/2016 on objection of unconstitutionality of the provisions of sole Article pt. 1 of the Law amending and supplementing the Law on social dialogue, published in the Official Gazette of Romania, Part I, no. 1000 of December 13, 2016.](#)

The Court held that it was unconstitutional to prohibit dismissal of persons with eligible positions within a trade union body, as provided by "the legislative initiative for amending social dialogue Law no. 62/2011", the sole article, pt. 1, as long as the dismissal measure is unrelated to union activity performed, including in situations covered by the provisions in question (i.e., for reasons not related to the employee, for professional non-compliance or for reasons of fulfilling the mandate that they received from employees of the unit).

The Court considered as established an absolute presumption of the existence of a link between union activity and one of the reasons for dismissal under article 61 and 65 of the Labour Code and stressed in this regard that the protection of elected officials leading the trade union body must operate exclusively in relation to trade union activity actually performed, and not in terms of the - basic - professional activity of the employee.

[Decision of the High Court of Cassation and Justice no. 19/2016 concerning the examination of referral to the Court of Appeal Iasi - department of labor disputes and social insurance case no. 7521/99/2014](#), published in the Official Gazette of Romania, Part I, no. 1010 of December 15, 2016.

HCCJ established that the provisions of art. 52 para. (1) letter b) first thesis of the Labour Code (when the employer filed a criminal complaint against the employee) do not have effect anymore and give rise to a right of receivable consisting of a compensation equivalent to the remuneration due to employees, during the suspension, in cases unresolved definitively on the date when the Constitutional court decision is published in the Official Gazette (i.e., constitutional Court Decision no. 279 of April 23, 2015 published in the Official Gazette of Romania, Part I, no. 431 of 17 June 2015). It was found in this regard that the effect of the declaration of unconstitutionality is the one regarding inapplicability of the legal text in question to a legal situation under establishment, and the court tasked with solving the dispute is obliged to take account of this aspect, even if in a reforming way of attack, without thereby being affected by the decision of unconstitutionality of the non-retroactivity rule.

[Decision. 14/2016 concerning the examination of complaints made by the Constanta Court of Appeals - Section I in civil cases no. 3.185/118/2014 and no. 7377/118/2014](#) published in the Official Gazette of Romania, Part I, no. 878 of November 2, 2016

According to this Decision, HCCJ finds that *the court of common law can not proceed itself to analyzing working conditions and, where appropriate, to the classification of the claimants' jobs under special circumstances, where the employer defendant has not followed a reassessment procedure of jobs or has not obtained an opinion from the Commission for reassessment of jobs under special conditions* and, more so, if the unit is not nominated in the Annex no. 3 of Law no. 263/2010. Thus, the common law court can not substitute the administrative body, assuming its responsibilities in terms of procedure, including regarding the rules of evidence regarding fulfilment of technical conditions to classify a job as falling under special conditions.

[Decisions regarding classifying by employers into labour groups I and II of activities performed prior to April 1, 2001:](#)

- failure to observe the legal procedure for employment of workers under special conditions corresponding to labor group I or II, either because the employer considered that jobs in the unit do not meet such conditions or because they ignored the legal provisions (having not taken any steps provided by procedure for evaluating such jobs) during the validity of the order, *can be replaced, judicially, by a litigation filed by the former employee in contradiction with the employer and qualified as a conflict, subject to labor jurisdiction, if the premise of employment in a job or carrying out an activity of those exhaustively listed in the annex lists to Order no. 50/1990 or Order no. 125/1990* (HCCJ Decision no. 9/2016, published in the Official Gazette of Romania, Part I, no. 891 dated November 8, 2016);
- *there is no declaratory action in common law for finding special working conditions where employees have worked after April 1, 2001 and no action in requiring employers to classify jobs in these conditions, when they had never obtained or, where appropriate, have not renewed permits for classifying jobs in these circumstances,*

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under interpretation and application of art. 19 of Law no. 19/2000 on public pensions and other social security rights, art. 29 para. (1) of Law no. 263/2010 on the unitary public pension system, in relation to the criteria and methodology for classifying jobs in special conditions, namely the methodology for renewal of employment permits for jobs in special conditions (HCCJ Decision no. 12/2016, published in the Official Gazette of Romania, Part I, no. 904 of 10 November 2016).

For additional details on this material, please do not hesitate to contact us.

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