

## employment - legal changes published in June 2017

**Decision of the Government of Romania no. 374/2017 amending and supplementing the Methodological Norms for the application of Law no. 76/2002 on the unemployment insurance system and the stimulation of employment, approved by the Government Decision no. 174/2002, and for modifying and completing the procedures on access to measures for stimulating employment, the financing modalities and the implementation instructions, approved by the Government Decision no. 377/2002** was published in the Official Gazette of Romania, Part I, no. 414 of June 6, 2017.

The Decision brings a series of amendments to the Methodological Norms for the application of Law no. 76/2002 on the unemployment insurance system and the stimulation of employment, as follows:

- it introduces provisions regarding the installation premium regulated by Law no. 76/2002 stipulating that, in case of request of the installment bonus, the proof of the existence of domicile or residence in the city from where the person leaves, as a result of employment in another city, can be done, as the case may be, with the identity document, certified copy of the original, filed at registration as a jobseeker, a certificate or any other document issued by the General Inspectorate for Immigration or, upon request and express consent of the person, on the basis of the information available to Agencies for employment;
- also in connection with the installation bonus, it is also provided that its monthly value is calculated based on the road distance, on the shortest route, expressed in kilometers, in both directions, between the city of residence or and the location where the beneficiary is to be employed as a result of employment;
- it also adds new provisions regarding the relocation premium provided for by Law no. 76 / 2002: persons benefiting from it, the documents to be submitted by the person concerned for granting the resettlement premium, the method of granting, the method of calculating the amount.

The new decision also amends the Procedures on access to employment incentives, funding methods and implementation instructions, approved by Government Decision no. 377/2002, introducing amendments regarding: the granting of the resettlement premium and its purpose (stimulating the employment of the registered unemployed with the employment agencies, who is employed, according to the law, in a remote city more than 50 km from their place of residence and as a result of that, they change their domicile or residence in that city or in its neighboring areas), the potential beneficiaries of the resettlement premium, modalities and deadlines for granting it.

**Order of the Ministry of Communications and Information Society no. 409/4020/737/703/2017 regarding the assignment in the activity of creation of computer programs** was published in the Official Gazette of Romania, Part I, no. 468 of 22 June 2017.

The new Order establishes that the employees of economic operators acting on the territory of Romania, whose scope of activity includes the creation of computer programs (NACE codes 5821, 5829, 6201, 6202, 6209), benefit from the tax

exemption on income from salaries and similar, provided in art. 60 pt. 2 of the Law no. 227/2015 regarding the Fiscal Code, if the following conditions are fulfilled cumulatively:

- the positions which they occupy correspond to the list of occupations listed in the Annex to the Order: Database Administrator; Analyst; System Engineer in Computer Science; Software system engineer; IT project manager; Programmer; Computer system designer; Computer programmer;
- the position is part of a specialized computer section, highlighted in the organisational chart of the employer, such as: department, directorate, office, service, compartment or similar;
- they hold a diploma granted after completing some form of long-term higher education or hold a diploma after completing the first cycle of undergraduate studies issued by an accredited institution of higher education and actually perform one of the activities listed in the Annex to the Order;
- the employer has achieved in the previous fiscal year and recorded separately in the analytical balances income from the creation of computer programs for retail;
- the annual income provided under point d) have a value of at least the equivalent in lei of EUR 10,000 (calculated at the monthly average exchange rate communicated by the National Bank of Romania, corresponding to each month in which the income was registered) for each employee benefiting from the income tax exemption; companies which are established during the fiscal year in order to benefit from the fiscal facility are exempted from the fulfillment of the condition stipulated in point d) for the year of establishment and for the following fiscal year.

The Order also regulates: the supporting documents which are meant to include the tax-exempt persons on salary and salary income and the fact that the tax exemption on salary and wage income is applied on a monthly basis only for wages and salaries and similar derived from the carrying out of a software development activity on the basis of an individual employment contract, irrespective of the time of employment of the person benefiting from the exemption.

The Order repeals the Order of the Minister of Communications and Information Society, the Minister of National Education and Research, the Minister of Labor, Family, Social Protection and the Minister of Public Finance no. 872 / 5.932 / 2.284 / 2.903 / 2016 regarding the assignment in the activity of creating computer programs, published in the Official Gazette of Romania, Part I, no. 22 of 9 January 2017.

The new Order entered into force on July 1, 2017, its provisions being applied starting July 2017.

**Decision of the High Court of Cassation and Justice no. 15/2017 regarding the examination of the appeal filed by the Brasov Court of Appeal - Civil Division, with a view to giving a preliminary ruling on the following question of law: how to apply the provisions of art. 56 para. (1) let. f) of Law no. 53/2003 - Labor Code, republished, with subsequent amendments, in order to determine whether they are applicable in all cases of conviction of an employee, by a final**

**court decision, to a prison sentence, including the stay of execution of punishment** was published in the Official Gazette of Romania, Part I, no. 470 of 22 June 2017.

The Court has been called upon to give a preliminary ruling on the following question of law: how to apply the provisions of Art. 56 para. (1) let.f) of Law no. 53/2003 - Labor Code, in the sense of determining whether they are applicable in all cases of conviction of an employee, by a final court decision, to a prison sentence, including the stay of the execution of punishment.

The referral was made in a case where the applicant, sentenced to a prison sentence with suspension of enforcement, disputes the employer's decision to terminate the employment contract lawfully, arguing that this measure applies only to the situation where the punishment is actually executed in custody, which makes the physical presence of the employee in the workplace impossible.

The High Court has determined that the text of the law submitted for review by giving a preliminary ruling involves a narrow interpretation, based on historical, logical and legal considerations, according to which the *termination of the employment contract occurs only if the sentenced person actually executes the sentence in the penitentiary, being physically unable to attend the workplace in order to fulfill their contractual obligations*. This justifies the reasoning for which, unlike the public dignity functions in the field of labor relations, the legislator referred to the execution of a prison sentence, and not only to the sentencing to such a punishment.

**Government Emergency Ordinance no. 46/2017 for amending and supplementing the Government Emergency Ordinance no. 8/2009 on the granting of holiday vouchers** was published in the Official Gazette of Romania, Part I, no. 506 of 30 June 2017.

Government Emergency Ordinance no. 8/2009 on the granting of holiday vouchers is amended as following:

- it is stipulated that the institutions and public authorities, as well as the economic operators in which the state or the administrative-territorial units are single or majority shareholders or directly or indirectly hold a majority stake, within the limits of the budget allocations for this purpose, grant between 1 July 2017 - 30 November 2018 a single holiday allowance or a single holiday bonus, as the case may be, in the form of vouchers in the amount of 1,450 lei for an employee;
- the employer establishes when to grant the vouchers, in accord with the unions or the employer's representatives, as applicable;
- the maximum amount of money that can be granted to employees as holiday vouchers by employers other than the above is the equivalent of up to six gross minimum basic salaries per country guaranteed in pay for an employee over a year fiscal;
- in the case of central and local public institutions and authorities, the way of granting holiday vouchers is established by Government decision, without reducing the annual amount paid to central and local government employees for holiday vouchers or equivalent;

- starting 1 December 2018, economic operators as defined by Government Ordinance no. 26/2013 regarding the strengthening of the financial discipline at the level of some economic operators where the state or the administrative-territorial units are single or majority shareholders or directly or indirectly hold a majority stake, will grant their employees the holiday bonuses only in the form of vacation vouchers, in the amount equal to the equivalent of a minimum basic gross salary in the country guaranteed in payment determined, according to the law, for an employee;
- the nominal values for holiday vouchers on paper medium are a multiple of 50 lei, up to 100 lei, maximal nominal value per voucher;
- it modifies the way to punish civil offences, instituting a system of fine points (one point of fine represents the value of a minimum gross wage per country guaranteed for payment).