

## employment - legal changes published in February 2017

**The decision of the High Court of Cassation and Justice no. 37/2016 concerning the examination of referral by the Court of Appeal Iasi - Department of labor and social insurance disputes,** published in the Official Gazette, Part I no. 114 of February 10, 2017.

The High Court found that the written form is a condition of validity of the individual employment contract, in accordance with art. 57 para. (1) of the Labour Code and art. 1242 par. (1) of the Civil Code, applicable in the case of a labor dispute in the absence of special rules to the contrary, **and failure to comply with this condition attracts the nullity of the individual employment contract** (nullity of the legal act is the only applicable sanction while neither labor law nor civil law regulates a theory of inexistence of the legal act). As a matter of general interest, in this case the nullity is absolute. The procedural framework where such invalidity can be found is not only an action for claiming (the action for nullity is such an action), a declaratory action being admissible in this case.

Therefore, the Court states that conclusion of a written contract, for validity, is a requirement imposed to the employer, however, since the nullity operates only for the future, failure to observe the written form does not prevent proving by the employee, by whatever means, of the work performed for the benefit of the employer until the termination of the legal relationship of employment, so that when formulating an action one is trying to prove the conduct between the parties of labor relations unlicensed formally through written deed, the court must proceed with their research, based on the evidence which also show the factual basis of the claims. **So, in case of failure of the parties to observe the obligation of concluding the individual employment contract in writing, the individual who performed work for and under the authority of the other party has open the way to action for acknowledgment of the employment relationship and its effects, also in case said employment relationship has ceased prior to referral to the court.**

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

**Voicu & Filipescu SCA**

31 General Ernest Brosteanu Street

010527, Bucharest, Romania

Tel: +40 21 314-02-00

Fax: +40 21 314-02-90

E-mail: [office@vf.ro](mailto:office@vf.ro)

Web: [www.vf.ro](http://www.vf.ro)