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cover article

Recent and future changes in the field of labor law. How to interpret them and what to expect next

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Amendment of Labor Code by GEO 53/2017. What future changes we might expect

Upon the entry into effect on August 7, 2017 of Government Emergency Ordinance no. 53/2017 which amended and supplemented the Labor Code, numerous discussions and problems arose in practice on trying to identify a realistic way of complying with these new legal requirements.

Currently, there is a discussion on a law on the approval with amendments of GEO no. 53/2017 to clarify certain aspects for employers

A first discussion appeared in practice as to how to keep a copy of the individual employment contract at the employee's workplace. The Law amending GEO no. 53/2017 will make clear that the employee's workplace is where the employee actually carries out their activity. As for the way the copy of the individual labor contract is kept, there were contradictory opinions from the Labor Inspection representatives, some inspectors saying that printouts should be provided in paper format, not accepting the electronic version of the documents. However, the changes currently under discussion will expressly allow for the employer the possibility of keeping copies of individual employment contracts either in paper format or in electronic format, obviously even in both ways.

If you have asked yourself as employers whether you have to keep the individual employment contract in the workplace, with or without all the addenda, the answer is the following: as long as the addenda have modified the essential elements of the individual employment contract, they must be made available to the control bodies so that they can form a general overview of the terms and conditions of the work relationship.

The issue of maintaining daily records of work hours has generated many questions among employers who have been put in a position to look for ways to document this evidence in order to be able to submit it for control of labor inspectors, starting with the classical attendance sheet to the collective attendance sheet and the electronic timekeeping.

The purpose of this regulation was the easier discovery by labor inspectors of those situations when employees under a suspended employment contract come to the workplace and carry out work in the employer's benefit or when part-time employees carry out overtime in a way unlawfully, finding themselves in the workplace outside the work schedule previously established with the employer.

Labor inspectors are interested in checking a real record of the hours of work, starting and ending hours, the electronic timekeeping being the most conclusive in this respect.

Complications arise in the case of mobile workers, ones who work at home or even teleworkers when the law on teleworking enters into force. The law amending GEO 53/2017 will regulate this situation by giving employers the opportunity to keep records of the hours worked by employees of these special categories on a daily basis under the conditions established with them, according to the specific activity carried out by them. This openness of the legislator will allow employers to choose the most convenient and affordable ways to highlight working time. One can customize procedures such as the use of log-in and log-off software to start or end work schedules, electronically, e-mailing the start time and end time of the work day, checking server access in the case of the employees working from home or the teleworkers, the daily transmission of the travel sheet for the mobile employees

A fairly high risk generated by this real record of the work program is the provision of additional voluntary work by employees without a direct or indirect request from the employer to do so. To prevent situations where employees who provide such additional voluntary work for various reasons (achievement of performance goals, desire to promote within the company) or simply stay after hours because they were not efficient during working hours due to their own fault, or dealt with personal problems, they come to ask the employer to pay these extra hours in the form of overtime, employers have to apply a series of measures, such as: (i) drafting an internal policy for soliciting and rewarding overtime, which clearly shows that the overtime recognized by the employer is only the one specifically requested by the employer, the employee having the obligation to fill in and submit a documented request for payment; (ii) regularly supervising employees who systematically stay after the work program and guiding them to work efficiently and respect the work schedule; (iii) periodic employee performance appraisal at the workplace based on objective criteria tailored to the specificity of each employee's work to sanction or adopt corrective measures for the inefficient employees; (iv) eventually inserting a column in the collective attendance time sheet in which to differentiate between the individual employee time and the hours of overtime.

On a case-by-case basis, taking into account the specifics of its activity and the current practice of employees to approach the work program set by the employer, one can find the easiest way for the employer not to be in the situation of being ordered by the court pay overtime to an employee who has not worked after the work program for the employer's benefit.

Teleworking. A solution for the future to regulate labor relations

The draft law on teleworking was registered with the Senate under no. B362 on August 16, 2017, currently pending for approval with amendments in the form of Law no. 215/2017.

The Committee on Labor, Family and Social Security issued a favorable report on the draft law on October 12, 2017, but proposed amendments to the initial draft.

Thus, the notion of teleworking instead of tele-working will be used, this being more clearly defined as the form of work organization by which the employee, on a regular and voluntary basis, fulfills its job duties in a place other than the workplace organized by the employer, at least one day a month, using information and communications technology.

Given the extremely flexible nature of teleworking, which will give the opportunity to work in so-called "unconventional" places, the employer will no longer be required to check the workplaces from the perspective of health and safety at work, as proposed in the initial draft. Obviously, the employer will have a number of specific obligations in this respect, especially from the point of view of instructing the teleworker not to subject itself to personal injury or occupational disease, as well as any other persons who may be affected by its actions or omissions during the work process.

The teleworking activity will have to be based on the consent of the parties and must be expressly stipulated in the individual employment contract. Obviously, the employee will not be obliged to perform teleworking, its refusal being unable to trigger disciplinary sanctioning from the employer.

Overtime can be performed at the employer's request and with the written agreement of the full-time teleworker. The work schedule will be determined by the employer and the employees in accordance with the provisions of the individual employment contract, the internal regulations and/or the applicable collective employment contract, and under the conditions established by them, the employer being entitled to check the activity of the teleworkers.

In the case of teleworking, the individual employer contract will contain, in addition to the standard elements provided by art. 17 al. 3 of the Labor Code, the following elements: (i) express mentioning that the employee works by teleworking; (ii) the period and / or the days in which the telework performs work at a workplace organized by the employer; (iii) the place / places used for performance of teleworking, as agreed by the parties; (iv) the schedule during which the employer is entitled to check the work of the teleworker and the concrete way of carrying out the control; (v) the procedure used for documenting the hours worked by the employees; (vi) the responsibilities of the parties agreed upon depending on the place / places used for performance of the teleworking activity, including responsibilities in the field of labor health and safety; (vii) the obligation of the employer to ensure the transport to and from the place where the teleworking activity is performed or the materials used by the company in its activity, as the case may be; (viii) the employer's obligation to inform the teleworkers about the provisions of the legal regulations, the applicable collective labor contract and / or the internal regulations regarding personal data protection, as well as the obligation of the employee to comply with these provisions; (ix) the measures taken by the employer to ensure that the teleworker is not isolated from the rest of the employees and provide it with the opportunity to meet its colleagues on a regular basis; and (x) the conditions under which the employer bears the expenses afferent to teleworking.

The reasons for adopting this law are various, including the most important: necessity to adapt the labor market to European and international trends, increase labor productivity and lower costs for the employer, adding flexibility in working relationships, finding more employment opportunities for a number of workers who are often excluded from the labor market, such as women, the elderly or people with disabilities, the improvement of the relationship between professional and personal life, etc.

We therefore eagerly await the passing of this law, hoping that it will be used confidently by the employers and will thus generate a wave of satisfaction in their midst.