

## employment - legal changes published in December 2017

**Government Emergency Ordinance no. 95/2017 for amending and supplementing the Law no. 76/2002 on the unemployment insurance system and the stimulation of employment and amending Law no. 200/2006 on the establishment and use of the Guarantee Fund for the payment of salary receivables** was published in the Official Gazette of Romania, Part I, no. 991 of 13 December 2017, with effect from January 1, 2018.

It was considered necessary to amend the Law no. 76/2002 on the unemployment insurance system and the stimulation of employment as a result of amendments to the Fiscal Code by the Government Emergency Ordinance no. 79/2017, as follows:

- "Insured" is considered to be a natural person who earns income under the law and is compulsorily insured under the unemployment insurance scheme as well as the person who voluntarily assures the conclusion of an unemployment insurance contract and the payment under this insurance contract of a contribution to the unemployment insurance budget;
- it is stipulated that the insured persons may be: (i) Romanian citizens working abroad, under the law, with the exception of persons who have the status of pensioners; and (ii) foreign citizens or stateless persons who, during the period of their domicile or residence in Romania, are employed or earn incomes, under the conditions of the law, except for persons who have the status of pensioners;
- the provision that insured persons are required to pay unemployment insurance contributions, i.e. the provision according to which employers have the obligation to calculate and to retain monthly, and to pay the individual contribution to the unemployment insurance budget, is removed;
- the scope of the compulsorily insured persons, by law, in the unemployment insurance system, is extended;
- it is established that the persons compulsorily insured under the unemployment insurance contract have the obligation to pay monthly to the unemployment insurance budget a contribution whose share stipulated in art. 20 par. (2) shall apply to the monthly income declared in the unemployment insurance contract;
- it is stipulated that unemployed persons who, at the time of applying for the right, have been admitted or attended a course of education, organized and / or accredited, as the case may be, under the law;
- new categories of people who can not benefit from the mobility bonus are introduced.

Law no. 200/2006 regarding the establishment and use of the Guarantee Fund for the payment of salary claims is modified accordingly, provided that employers have the obligation to pay, according to the provisions of Law no. 227/2015, the insurance contribution for work. The activity regarding the fiscal registration, the declaration, the

establishment, the verification, the collection and the settlement of the complaints for the labor insurance contribution are performed by the central fiscal body defined according to the Law no. 207/2015 on the Fiscal Procedure Code.

Emergency Ordinance no. 95/2017 also contains transitional provisions regulating the situation of persons claiming unemployment benefits after the date of its entry into force, namely persons whose entitlement to unemployment benefit was established before the date of its entry into force. The amount of the activation premium is different depending on the time of request (before or after the date of entry into force of the Emergency Ordinance).

In addition, starting with the fiscal year 2018, the amounts due for employment incentives funded by the unemployment insurance budget, for which it is provided, in accordance with the legal provisions, the conclusion of conventions with the county or Bucharest employment agencies shall no longer be deducted by the employer in accordance with the legal provisions in force until 1 January 2018 and the corresponding provisions of the conventions concluded and granted by the territorial employment agencies under the conditions established by the Decision Government no. 174/2002 approving the Methodological Norms for the application of Law no. 76/2002 on the unemployment insurance system and stimulation of employment.

**Government Emergency Ordinance no. 99/2017 for amending and supplementing the Government Emergency Ordinance no. 158/2005 on sickness leave and healthcare indemnities** was published in the Official Gazette of Romania, Part I, no. 1005 of December 19, 2017, applicable from the January 2018 income.

The new ordinance brings a series of additions and amendments to Government Emergency Ordinance no. 158/2005, the following being relevant:

- it is stipulated that persons insured for leaves and health insurance allowances in the healthcare insurance system are entitled, during the period of their domicile or residence on the territory of Romania, to sick leaves and benefits if: (i) they earn income from an activity based on an individual employment contract, a posting or a special legal status, as well as other income assimilated to salaries; (ii) they earn in Romania the income referred to in point (i) from employers from countries not subject to applicable European legislation in the field of social security, as well as agreements on social security systems to which Romania is a party; or (iii) is entitled to unemployment benefit, according to the law;
- it is important to note that individuals other than those mentioned above, based on insurance contract for leave and health insurance indemnities, can enroll in the system of healthcare insurance to benefit from leave and health insurance indemnity;
- it is established that the right to sickness leave and health insurance indemnities to which insured persons are entitled is subject to the payment of the labor insurance contribution intended to cover these allowances regulated by the Fiscal Code;
- it provides that the amount intended exclusively to finance expenditures stipulated by the emergency ordinance are ensured from the amounts distributed to the fund from the insurers' labor insurance

contribution, according to art. 220<sup>6</sup> par. (4) lit. d) of the Fiscal Code, from the contribution stipulated in art. 3 par. (3) as well as from the state budget, as the case may be;

- the minimum insurance period for granting the rights provided in GEO 158/2005 is 6 months during the last 12 months preceding the month for which the sick leave is granted;
- the provisions of Government Emergency Ordinance 158/2005 also apply to persons working in the ministries and institutions of the defense, public order and national security sectors, except for military personnel, policemen and civil servants with special status;
- individuals who, on 31 December 2017, are insured under the healthcare insurance scheme for sickness leave and benefits on the basis of a statement of insurance for leave and allowances in order to benefit from health insurance, starting with 1 January 2018, are obliged to conclude the insurance contract provided for in art. 1 par. (2) of GEO 158/2005.

**Government Decision no. 905/2017 on the general registry of employees** was published in the Official Gazette of Romania, Part I, no. 1005 of 19 December 2017, entering into force on this date and repealing Government Decision no. 500/2011.

The act establishes the methodology for setting up the general registry of employees, hereinafter referred to as the registry, and supplementing and submitting in the registry the elements of the employment relationship (called data) by the following categories of employers:

- a) natural or legal persons of private law, whether or not they have public utility status;
- b) institutions / public authorities / other legal entities employing personnel on the basis of an individual employment contract.

According to the Decision, each of the above mentioned employers has the obligation to send the data in the registry, to the territorial labor inspectorate in whose territorial range they are headquartered / reside, in the order of employment. The liability for the correctness of the data transmitted to the registry lies solely with the employer.

Employers may contract the service of filling in and sending the data in the registry by concluding service contracts with providers operating under the legal provisions in force, including the provisions on personal data protection.

The Government decision determines which is the data to be filled in, the list not being exhaustive. The time when the registry should be sent to the territorial labor inspectorate is also provided, depending on the data categories.

Employers or, as the case may be, service providers, have the obligation to send the data to the territorial labor inspectorate in whose territorial jurisdiction the employer's headquarters / residence is located, no later than the day before the start of the activity by the first employee.

The new normative act stipulates that the employers provided in art. 1 have the obligation to draw up a personal file for each of the employees with an individual employment contract, to keep it in good condition at the employer's

headquarters or, where appropriate, at the secondary office if the competence of recruiting personnel is delegated through the conclusion of individual labor contracts, as well as to submit it to the labor inspectors at their request.

The personal file of the employee includes at least the following documents: the documents necessary for the employment, the individual employment contract, the addendums and other documents related to the modification, suspension and termination of the individual labor contracts, education related documents / qualification certificates and any other documents certifying the legality and accuracy of the data inserted in the registry.

In addition, it is provided that any change in the data on the gross monthly basic salary, allowances, bonuses, and other benefits, as provided in the individual employment contract or, as the case may be, in the collective labor contract from the date of entry into force of the provisions of the present decision and until March 31, 2018, shall be transmitted until 31 March 2018. Failure to send these amendments represents a misdemeanor and is sanctioned by a fine from Lei 5,000 to Lei 8,000.

**Government Decision no. 940/2017 for the amendment and supplementation of the Methodological Norms regarding the granting of holiday vouchers, approved by the Government Decision no. 215/2009** was published in the Official Gazette of Romania, Part I, no. 1026 of December 27, 2017, to enter into force on January 26, 2018.

The decision stipulates that, in the case of employees in public institutions and authorities, only one holiday allowance, in the form of vouchers, is paid in the amount of 1,450 lei per employee, within the limits of the budget allocated for this purpose.

Beneficiaries who have received nominal holiday vouchers are the only persons entitled to use holiday vouchers during the period mentioned therein and exclusively for the payment of the package of contracted travel services.

In the case of employees in public institutions and authorities with more than one employer, one holiday allowance, in the form of vouchers, in the amount of 1,450 lei per employee, is granted by the employer where the beneficiaries have their basic function, according to the law. If the basic function can not be established, the beneficiary of the holiday allowance shall choose in writing the unit granting the holiday vouchers, having the obligation to notify, within a maximum of 10 working days, to the other employers the option selected.

**Government Decision no. 924/2017 for establishing the procedure of re-evaluation of the jobs under special conditions, re-evaluated according to the provisions of art. 30 par. (2) of the Law no. 263/2010 on the unitary pension system** was published in the Official Gazette of Romania, Part I, no. 1039 of 29 December 2017 and is applicable from that date.

The decision applies only to workplaces under special conditions provided by art. 30 par. (1) lit. e) of Law no. 263/2010 on the unitary pension system (in particular, point e) contains a list of activities in which there are special employment places, as well as a number of units that obtained the opinion for the fulfillment of the procedures and criteria for classification special conditions), from the units who have obtained a decision to maintain the approval for special conditions under the Government Decision no. 1284/2011.

According to the act, the methodology for reassessment of jobs in special conditions includes the following steps in the chronological order indicated:

- (a) designating jobs for reassessment, by the employer, together with the existing trade unions and / or the designated employee / internal prevention and protection service, or the workers' representatives with specific responsibilities in the field of health and safety at work, priority being given to workers' representatives from the jobs for which re-evaluation is requested, and the occupational health physician who has supervised the health status of workers in the targeted workplaces;
- (b) performing a technical expertise to reassess jobs in special conditions (involving verification of risk factors);
- (c) performing a medical check-up for job reassessment under special conditions (involves assessing the health status of workers in relation to the risk factors existing at the workplace under special conditions compared to the conditions existing at the time of previous re-classification of jobs in special conditions, based on the report of the medical practitioner who supervises the health status of the workers and the morbidity due to occupational diseases, diseases related to the occupation, also taking into account the occupational safety and health measures).

In order to reassess the jobs in special conditions, within a period of 60 days from the date of publication of the Decision in the Official Gazette of Romania, a joint order of the minister of labor and social justice and of the minister of health shall establish the Commission for the reassessment of the jobs under special conditions, which will be established within the Labor Inspectorate.

For reassessment of employment under special conditions, the employer must submit to the Commission's secretary a series of documents (including a written request for job reassessment under special conditions, technical expertise, medical expertise).

After examining the application for job reassessment in special conditions, the Commission will decide whether to maintain or reject the approval of employment in special conditions. The decision issued by the Commission may be challenged in accordance with the Administrative Litigation Law no. 554/2004.

Expenditure related to the process of job reassessment under special conditions shall be paid by the applicant employer.

On the date of the Decision's entry into force, the Government Decision no. 1.284 / 2011 on the establishment of the procedure for reassessment of the jobs under special conditions provided by art. 30 par. (1) lit. e) of Law no. 263/2010 on the unitary pension system, published in the Official Gazette of Romania, Part I, no. 935 of December 29, 2011 is repealed.

**Government Decision no. 946/2017 regarding the establishment of the quota by types of workers admitted to the labor market in 2018** was published in the Official Gazette of Romania, Part I, no. 1040 of 29 December 2017, with effect from that date.

The Decision established the numbers by types of newly admitted workers on the Romanian labor market for the year 2018, as follows:

- (a) permanent workers - 4.000;
- (b) posted workers - 1,200;
- (c) persons transferred within the same company - 700;
- (d) highly qualified workers - 500;
- (e) seasonal workers - 400;
- (f) trainees - 100;
- (g) cross - border workers – 100.