

employment - legal changes published in November 2020

Decision of the High Court of Cassation and Justice no. 15/2020 regarding the solutioning of the appeal in the interest of the law that forms the object of the file no. 1048/1/2020 was published in the Official Gazette of Romania, Part I, no. 1021 of November 3, 2020, being applicable starting with the same date.

The High Court of Cassation and Justice was invested by the request submitted by the Management Board of the Suceava Court of Appeals with the solutioning of the appeal in the interest of the law concerning the following legal issue: *"The action filed by the employer in contradiction with the employee for the refund of the amounts paid by the first to the latter, voluntarily, on the basis of an executory court decision, of first instance, which is subsequently annulled in the appeal, covers the legal nature of a labour dispute, the settlement of which is limited to the provisions of art. 256 para. (1) of Law no. 53/2003 on the Labour Code, attracting, from a functional and procedural point of view, the material competence to settle the file in the first instance in favor of the Tribunal – Specialized Section in Labour Disputes and Social Insurances, or has the legal nature of a request for return of execution, whose solutioning is limited to the provisions of art. 724 para. (3) of the Code of Civil Procedure, attracting the material competence of solutioning in the first instance in favor of the enforcement court, respectively of the court of first instance".*

The High Court ascertained that the corroborated interpretation of the texts of the law on forced execution shows that the rules of civil procedure do not regulate the possibility of requesting, in the main way, the return of execution, when the title on the basis of which the payment made voluntarily by the debtor was abolished, if the forced execution has not been started, being incident the institution of undue payment, which involves the promotion of a separate lawsuit for the restoration of the previous situation. Therefore, the provisions of art. 256 of the Labour Code is the applicable legal basis for the restitution of benefits by the employees who received from the employer, prior to the commencement of the enforcement proceedings, salary rights based on first instance court decisions, annulled in the appeals phase.

For these reasons, the appeal in the interest of the law was admitted, the High Court establishing that the action filed by the employer in contradiction with the employee for the refund of the amounts paid by the first to the latter, voluntarily, before the start of the enforcement procedure, based on a court decision of first instance, which is subsequently annulled in the appeal phase, has the legal nature of a labour dispute, the settlement of which is limited to the provisions of art. 256 para. (1) of the Labour Code, attracting the material competence of settlement in the first instance in favor of the Tribunal - Specialized Section in Labour Disputes and Social insurances, according to art. 208 and art. 210 of the Law on social dialogue no. 62/2011.

Government Emergency Ordinance no. 192/2020 for the amendment and supplementation of the Law no. 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic, as well as to amend letter a) in art. 7 of Law no. 81/2018 on the teleworking activity was published in the Official Gazette of Romania, Part I, no. 1042 of November 6, 2020, entering into force on the same date.

Regarding the Law no. 155/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic, the new Ordinance brought the following amendments:

- the obligation to wear a protective mask in public spaces was established (therefore, regardless of whether they are closed or open; the old regulation provided for this obligation only in closed public spaces), maintaining this obligation to wear the protective mask in commercial spaces, means of public transport and at the workplace;
- the possibility that the employers had during the state of alert to establish, with the employee's consent, the activity of teleworking or working from home, the change of the workplace or the employee's attributions, was transformed into a unilateral prerogative of the employer; according to the new changes, during the state of alert, the employers order the teleworking regime or working from home, where the specifics of the activity allow, in compliance with the provisions of Law no. 53/2003 - Labour Code and Law no. 81/2018 on the telework activity (therefore, without the need for the employee's consent in this respect);
- the possibility for employers to establish individualized work schedules during the state of alert has been transformed into an obligation; thus, it is provided that, during the state of alert, by derogation from the provisions of art. 118 para. (1) of the Labour Code, the employers in the private system, central and local public authorities and institutions, regardless of the method of financing and subordination, as well as autonomous utilities, national companies, companies in which the share capital is entirely or majority owned by the state or an administrative-territorial unit, with a number of more than 50 employees, organizes the work schedule so that the staff is divided into groups to start, respectively to finish the activity at a difference of at least one hour;
- it has been established that, between November 2020 and December 31, 2020, it may be ordered the suspension of the activities that require the physical presence of preschoolers and students in the educational units and to continue the teaching activities online.

As regards the Law no. 81/2018 on the teleworking activity, the new amendment aims to introduce the possibility for the parties to agree through a written agreement that the means related to the information and communication technology and / or work equipment necessary to provide the teleworking to be owned by the teleworker, specifying the conditions of their use. The old regulation provided that the employer has the obligation to provide these means and / or work equipment, unless the parties agreed otherwise.

Order of the Minister of Labour and Social Protection no. 1600/2020 regarding the amendment of Annex no. 1 to the Order of the Minister of Labour and Social Protection no. 741/2020 for the approval of the template of the documents provided in art. XII para. (1) of the Government Emergency Ordinance no. 30/2020 for amending and supplementing some normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation determined by the spread of SARS-CoV-2 coronavirus, with amendments and completions brought by the Government Emergency Ordinance no. 32/2020 for the amendment and completion of the Government Emergency Ordinance no. 30/2020 for amending and supplementing some normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus and for establishing additional social protection measures was published in the Official Gazette of Romania, Part I, no. 1073 of October 13, 2020, entering into force on the same date.

Through the Order, Annex no. 1 to the Order of the Minister of Labour and Social Protection no. 741/2020 which contains the templates of the documents necessary for obtaining the allowances that employees benefit from for the period of temporary suspension of the individual employment contract, at the initiative of the employer, according to art. 52 para. (1) letter c) of the Labor Code (the employer's activity being temporarily reduced/ interrupted as a result of the effects produced by the SARS-CoV-2 coronavirus). The amendments take into account the alignment with the recent legislative provisions.

Government Decision no. 967/2020 on the extension of the state of alert on the Romanian territory starting with November 14, 2020, as well as the establishment of the measures applied during it to prevent and combat the effects of the COVID-1 pandemic was published in the Official Gazette of Romania, Part I, no. 1078 of November 14, 2020, entering into force on the same date.

The Decision extended the state of alert on the Romanian territory starting with November 14, 2020 with another 30 days.

The Decision maintains the obligation to wear a protective mask in public spaces (closed or open, as Law no. 55/2020 was amended by G.E.O. no. 192/2020), commercial spaces, means of public transport and at the workplace.

Also, for all the public or private institutions and economic operators, the obligation to order the teleworking regime or working from home, where the specificity of the activity allows, under the conditions of art. 108-110 of the Labour Code, as well as those established by Law no. 81/2018 on the regulation of telework activity.

In the situation where the employee cannot carry out the activity by telework or work at home and in order to avoid the congestion of public transport, employers in the private system, central and local public authorities and institutions, regardless of the method of financing and subordination, such as and autonomous utilities, national companies, national companies and companies in which the share capital is entirely or mainly owned by the state or by an administrative-territorial unit, with a number of more than 50 employees, have the obligation to organize the work program so that staff be divided into groups to start or finish the activity at a difference of at least one hour.

Government Emergency Ordinance no. 198/2020 for supplementation of the Government Emergency Ordinance no. 147/2020 on granting days off for parents to supervise the children, in case of limitation or suspension of teaching activities that involve the actual presence of children in schools and early childhood education units, following the spread of SARS-CoV-2 coronavirus was published in the Official Gazette of Romania, Part I, no. 1108 of November 19, 2020, entering into force on the same date.

According to the Ordinance, between November 2020 and December 31, 2020, the provisions of the G.E.O. no. 147/2020 also apply in the situation where, by order of the Minister of Education and Research, it is ordered to suspend the activities that require the physical presence of preschoolers and students in schools and the continuation of the teaching activities online.

In this situation, the days off will be granted for the period established in the order of the Minister of Education and Research.