

## employment - legal changes published in December 2020

**Law no. 278/2020 for the approval of the Government Emergency Ordinance no. 147/2020 on granting days off for parents to supervise 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, Part I no. 1166 of December 2, 2020, entering into force starting with December 5, 2020.

The Law approved the Government Emergency Ordinance no. 147/2020, the following amendments being brought:

- a new condition was introduced that must be fulfilled by the parents in order to benefit from the days off [condition that must be fulfilled cumulatively together with the others provided in art. 1 para. (2)], namely that the occupied workplace does not allow working from home or teleworking;
- it is established that, regardless of whether or not the teaching activities have been limited or suspended, the parent or legal representative whose child, up to 12 years of age, who suffers from a chronic disease and is enrolled in a pre-school education or pre-school unit, also benefits from days off;
- an exception is made to the established rule that the employer is obliged to grant days off if the employee so requests; thus, for the following categories of employees, the days off are granted only with the consent of the employer: from the units of the national energy system; from the operating units of the nuclear sectors; from units with 24/7 activity; from social assistance units, telecommunications, public radio and television units; from the railway transport network; from the units that ensure the public transport and the sanitation service of the localities, the supply of the population with gas, electricity, heat and water; from the food trade units, financial services, fuel distribution, production and distribution of medicines and sanitary equipment, as well as the staff from the pharmaceutical units;
- also, if one of the parents carries out its activity in one of the areas listed above, he / she is entitled to an increase granted in addition to the due salary rights, in the amount of 75% of the basic salary corresponding to one working day, but not more than the daily correspondent of 75% of the average gross earnings used to substantiate the state social insurance budget corresponding to the number of the working days.

**Government Emergency Ordinance no. 211/2020 regarding the extension of the application of some social protection measures adopted in the context of the spread of the SARS-CoV-2 coronavirus, as well as for the amendment of the Government Emergency Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus, as well as to stimulate employment growth** was published in the Official Gazette, Part I no. 1189 of December 7, 2020, entering into force on the same date.

According to the provisions of the G.E.O. no. 211/2020, the deadline for granting the indemnities to the employees for the period of temporary suspension of the individual employment contract at the initiative of the employers as a result

of the effects produced by the SARS-CoV-2 coronavirus was extended until June 30, 2021, the same deadline being applicable also for granting the indemnities to the professionals and persons who have concluded individual labour agreements based on the Law no. 1/2005 which interrupt their activity due to the effects of the SARS-CoV-2 coronavirus.

At the same time, the following amendments are brought to the Government Emergency Ordinance no. 132/2020:

- by way of derogation from the provisions of art. 8 para. (1) and art. 112 para. (1) of the Labour Code, in case of temporary reduction of the activity determined by the establishment of the state of emergency/ alert / siege, under the law, the employers may reduce the working time of employees by up to 80% of the monthly duration calculated by reference to the duration provided in the individual employment contract, with the information and consultation of the union, employees' representatives or employees, as the case may be, prior to the communication of the employee's decision (in the previous regulation the threshold was 50% of the daily, weekly or monthly duration);
- it is provided that the reduction of the working time in case of temporary reduction of the activity determined by the establishment of the state of emergency/ alert/ siege, is established by the employer's decision for a period of at least 5 working days, monthly (in the old regulation the minimum number of days was 5 consecutive working days);
- regarding the prohibition of the employment of staff for the performance of activities identical or similar to those performed by the employees whose working hours have been reduced, as well as the prohibition of subcontracting of activities carried out by the employees whose working hours have been reduced, these refers strictly to the jobs in which the employees actually carry out their activity, located in the perimeter provided by the employer, at the level of which the measure of reducing the working time is applied.

**Government Decision no. 1046/2020 regarding the supplementation of the Government Decision no. 719/2020 for the approval of the settlement and payment procedure of the amounts granted based on the Government Emergency Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus, as well as to stimulate employment growth** was published in the Official Gazette, Part I no. 1199 of December 9, 2020, entering into force on the same date.

The new Decision regulates the extension, until June 30, 2021, of the granting of the measures provided for in **article 1 paragraph (1)** - reduction of the working time by the employers determined by the establishment of the state of emergency/ alert/ siege and **article 3 paragraph (1)** - reduction of the working time determined by the establishment of the state of emergency/ alert/ siege in the case of professionals and persons who have concluded individual labor agreements based on Law no. 1/2005 of the G.E.O. no. 132/2020.

It is also established that during the period 1 January 2021-30 June 2021, the measure provided for in article 3 paragraph (1) of the G.E.O. no. 132/2020 applies to professionals and persons who have concluded individual employment agreements based on Law no. 1/2005 who benefited from the indemnity provided for in Article XV paragraph (1) of the G.E.O. no. 30/2020.

**Law no. 282/2020 for the approval of the Government Emergency Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus, as well as to stimulate employment growth** was published in the Official Gazette, Part I no. 1201 of December 9, 2020, entering into force on December 12, 2020.

Law no. 282/2020 approves G.E.O. no. 132/2020, with the following amendments:

- the conditions under which the temporary reduction of the working time determined by the establishment of the state of emergency/ alert/ siege may be ordered are amended, in accordance with the law, as follows: this measure can be implemented during the state of emergency/ alert/ siege, as well as for a period up to 3 months from the end of the last period in which the state of emergency/ alert/ siege was established; in addition, the maximum threshold of 50% of the daily duration (weekly or monthly) until which the employers have the possibility to reduce the employees' working time is reinstated;
- it is established that the amounts initially paid by the employer for the payment of the indemnity during the reduction of the working time are to be settled **within 5 days** from the issuance of the decision of the Employment Agency stating that the documents submitted by the employer meet the conditions required by the law;
- the documents to be submitted by the employer for the settlement of the amounts granted as indemnity to the employees during the reduction of the working time were introduced, together with the settlement procedure;
- it is provided that the periods in which the employees benefit from the reduction of working time and the indemnity related to this measure, **represent an assimilated contributory period in the unemployment insurance system** and will be taken into account when establishing the contribution period of at least 12 months in the last 24 months prior to registration of the application for the granted indemnity for unemployment;
- it is established that the financial support of Lei 2,500 granted to the employers for each teleworker in order to purchase packages of technological goods and services necessary to carry out the teleworking activity is granted, in the order of submitting of applications, until December 31, 2020, also for the employees who worked in teleworking regime during the state of alert (not only during the state of emergency) for at least 15 working days.

**Government Decision no. 1065/2020 regarding the extension of the state of alert on the Romanian territory starting with December 14, 2020, as well as the establishment of the measures applied during it to prevent and combat the effects of the COVID-19 pandemic** was published in the Official Gazette, Part I no. 1215 of December 11, 2020, entering into force on the same date.

Through the Government Decision no. 1065/2020, it was decided to extend the state of alert on the Romanian territory starting with December 14, 2020 for 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 public or private institutions and economic operators, the obligation to order the organization of work at home or in teleworking regime is maintained, 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 teleworking activity.

In the event that the employee cannot work in teleworking regime or working from home, if there are more than 50 employees, the employers have the obligation to organize the work schedule so that the staff is divided into groups to start or end the activity at a difference of at least one hour.

**Decision of the Constitutional Court no. 723/2020 regarding the objection of unconstitutionality of the provisions of the Law for supplementation of Law no. 53/2003 - The Labour Code** was published in the Official Gazette, Part I no. 1242 of December 16, 2020.

Although the objection of unconstitutionality was rejected as unfounded, the issue under discussion deserves to be mentioned, being extremely interesting both from the perspective of the current context and in view of the fact that 2 of the judges expressed a separate opinion.

According to the criticism of unconstitutionality, the Law no. 298/2020 for the supplementation of the Labour Code violates the principle of legal certainty. In this sense, it is argued that Law no. 298/2020 establishes a legislative parallelism by reference to the norms in force contained in art. XI-XIII of the G.E.O. no. 30/2020 and G.E.O. no. 32/2020, which contradicts the imperative norms of legislative technique.

The Constitutional Court held that the criticized Law envisages measures similar to those provided by art. XI-XIII of the G.E.O. no. 30/2020, but the Law will apply for the future, for the eventual situations in which the state of siege or the state of emergency will be declared. Therefore, the criticized Law considers only the future, generic situations, which, de plano and de jure, will be legally classified as a state of siege or a state of emergency.

Instead, the G.E.O. no. 30/2020 was adopted in consideration of an already existing state of emergency, previously established by Decree no. 195/2020, extended by Decree no. 240/2020, but which ceased 30 days after the application of the latter decree (respectively May 14, 2020). The only common element as a hypothesis-situation between the criticized Law and the G.E.O. no. 30/2020 is the state of emergency itself, but, from a temporal point of view, these, as concrete states of fact, cannot overlap, because, on the one hand, the examined Law, after promulgation, will not be able to produce retroactive effects, and, on the other hand, neither G.E.O. no. 30/2020 cannot be ultraactive. Therefore, even if the Law subject to constitutional review is to enter into force before December 31, 2020, its legal effects concern only a state of emergency/ siege to be declared in the future, and not the state of emergency already established by Decree no. 195/2020 and extended by Decree no. 240/2020, which has been exhausted and which forms, partially, the legal hypothesis of application of the G.E.O. no. 30/2020.

In the separate opinion of 2 of the judges of the Constitutional Court, they consider that the different action in time of the two normative acts does not make disappear the legislative parallelism established by the Law criticized for the period in which Decree no. 195/2020 and Decree no. 240/2020 acted, because the time can no longer be given back so that a possible normative action would make G.E.O. no. 30/2020 and G.E.O. no. 32/2020 disappear from the active fund of the legislation. From a legal point of view, the passage of time is an objective fact; it cannot be reversed or otherwise influenced by normative acts, even if they are laws adopted by the Parliament.

**Law no. 296/2020 for the amendment and supplementation of the Law no. 227/2015 on the Fiscal Code** was published in the Official Gazette, Part I no. 1269 of December 21, 2020, entering into force since December 24, 2020.

Law no. 296/2020 brought a series of amendments to the Fiscal Code. **Among the novelties brought is the inclusion of a new fiscal facility for the activity of teleworkers, namely:** the teleworkers who receive money from employers, within a certain monthly limit established by the employment contract or the Internal Regulations (within a monthly threshold of Lei 400 corresponding to the number of days in the month in which the employee carries out the teleworking activity), for the payment of utilities expenses at the place where the teleworkers carry out their activity (such as electricity, heating, water, data subscription) and for the purchase of furniture and of office equipment, are exempted from paying the related salary taxes for these amounts, starting from January 2021 (therefore, **from the perspective of the income tax, these amounts are considered as non-taxable income and are not included in the monthly calculation basis of social security contributions**). In addition, these expenses related to the teleworking activity borne by the employer are considered **deductible expenses when calculating the profit tax**.

Regarding the new facility introduced in the Fiscal Code, the following aspects must be emphasized:

- the establishment of the amount that can be granted by the employer to the teleworkers under the conditions mentioned above can be done either **(i)** by negotiating and including the respective amount in the individual and/or collective labour contract, or **(ii)** by including in the Internal Regulations the amount that the teleworkers will receive to cover the additional expenses generated by the provision of teleworking activity;
- the employer's decision to grant these amounts should apply to all employees who perform the activity in teleworking regime, and not just some of them; in the situation in which these amounts would be granted only for a part of the employees who carry out their activity in teleworking regime, there is the risk that this practice to be considered as being contrary to the principle of equal treatment;
- the threshold of Lei 400/ month represents the maximum amount for which no tax and contributions are due; this does not mean that employers cannot establish through the Internal Regulations (in compliance with the obligation to consult and inform employees) or by individual or collective bargaining agreement, a maximum limit higher than this threshold of Lei 400; in this case, however, the difference established in addition by the employer will be subject to the fiscal regime applicable to the income from salaries or assimilated to salaries;
- it is important to mention that the law does not require the teleworker to present supporting documents, so as to demonstrate that the respective expenses regarding the utilities or the acquisition of office furniture and equipment were actually made in this respect; therefore, the facility is granted without applying income tax or social contributions for employees who work in teleworking regime, supporting documents regarding the expenses incurred not being required;
- the inclusion of these amounts for teleworkers in the category of those for whom no tax and social contributions are due does not establish the obligation of the employer to grant them.

**Law no. 298/2020 for the supplementation of the Law no. 53/2003 - The Labour Code** was published in the Official Gazette, Part I no. 1293 of December 24, 2020, entering into force on December 27, 2020.

The Law introduces a new situation in which the individual employment contract can be suspended at the initiative of the employer at art. 52 para (1) letter f), namely during the temporary suspension of the activity and/ or its reduction as a result of the decree of the state of siege or the state of emergency.

In case of temporary suspension of the activity and/ or its reduction as a result of the decree of the state of siege or state of emergency, the employees affected by the reduced or interrupted activity, who have their individual employment contract suspended, benefit from an indemnity paid from the unemployment insurance budget. (subject to taxation and payment of compulsory social security contributions; instead, no insurance contribution for work is due) in the amount of 75% of the basic salary corresponding to the job held, but not more than 75% of the average gross earnings used to substantiate the state social insurance budget in force, for the entire duration of maintaining the state of siege or the state of emergency, as the case may be.

If an employee has several individual employment contracts, of which at least one full-time contract is active during the establishment of the state of siege or state of emergency, he does not benefit from the above-mentioned indemnity.

Also, it is established the procedure that the employers must follow in order to settle the amounts paid as indemnity. The documents must be submitted to the employment agencies in the current month for the payment of the previous month's indemnity.

At the same time, **the employers can not cancel the job positions** held by the employees whose individual employment contracts have been suspended in the form mentioned above for a period at least equal to the period of suspension for which they benefited, for these employees, from the payment of indemnities from the unemployment insurance budget. Violation of this obligation is a contravention and is sanctioned by the restitution of the amounts received as indemnity for the cancelled job positions.

**Government Emergency Ordinance no. 220/2020 on the application of social protection measures after January 1, 2021 in the context of the spread of SARS-CoV-2 coronavirus, as well as for the amendment of some normative acts** was published in the Official Gazette, Part I no. 1326 of December 31, 2020, entering into force on the same date.

The Ordinance provides for social protection measures after 1 January 2021 in the context of the spread of the SARS-CoV-2 coronavirus, namely:

- a) the employers who, **between 1 January and 1 September 2021**, employ, for an indefinite period, full-time, individuals over the age of 50, whose employment relationships have ceased for reasons not attributable to them, during the state of emergency, or alert, individuals aged between 16 and 29 registered as unemployed in the records of the county employment agencies, respectively of the municipality of Bucharest, as well as Romanian citizens, included in the same age categories, who in 2020 had their employment relationship terminated with foreign employers on the territory of other states, for reasons not attributable to them, by dismissal, **receive monthly, for a period of 12 months, for each person employed in this category, 50% of the employee's salary, but not more than Lei 2,500;**
  - the condition for being able to benefit from the above measure is to maintain the employment relationship for a period of at least 12 months after the above-mentioned 12-month period.

- the above amounts are settled from the unemployment insurance budget, at the request of the employers, submitted by electronic means to the county employment agencies; the settlement procedure is to be approved;
  - from this measure can not benefit the public institutions and authorities and the employers who are in bankruptcy, dissolution, liquidation or whose activities have been suspended or restricted at the time of requesting these amounts.
- b) the term until which the state can settle a part of the salary of the seasonal employees - 41.5% of the salary related to the days worked in these jobs, for a working period of eight hours per day, but not more than 41.5% of average gross earnings in 2020 has been extended until June 30, 2021;
- c) also until June 30, 2021 was extended the period until which the state can settle a part of the salary granted to employees who conclude individual employment contracts for a fixed period of up to 3 months (41.5% of the related salary days worked in these jobs, for a working period of 8 hours/ day, but not more than 41.5% of the average gross earnings);
- d) the provisions of G.E.O. no. 147/2020 on granting days off for parents in order to supervise children have been extended until June 30, 2021, including the situation in which the Minister of Education orders the suspension of activities that require the physical presence of early pre-schoolers and students in schools and the continuation of online teaching activities.

**Government Decision no. 1133/2020 on establishing the quota of newly admitted foreign workers on the labour market in 2021** was published in the Official Gazette, Part I no. 1326 of December 31, 2020, entering into force on the same date.

The quota of newly admitted foreign workers on the labour market was set at 25,000, compared to 30,000 in 2020.

**Government Emergency Ordinance no. 226/2020 regarding some fiscal-budgetary measures and for the amendment and supplementation of some normative acts and the extension of some deadlines** was published in the Official Gazette, Part I no. 1332 of December 31, 2020, entering into force on the same date.

According to the new regulation, the period for which the public institutions grant, annually, holiday vouchers in the amount of Lei 1,450, has been extended until December 31, 2021 (art. 1 of G.E.O. no. 8/2009).

Accordingly, the new Ordinance also amends the Law no. 165/2018 regarding the granting of value tickets, in the sense of extending the date on which the provisions regarding holiday vouchers enter into force until January 1, 2022 (therefore, until the said date, the Law no. 165/2018 will not apply to holiday vouchers).

At the same time, by derogation from the provisions of the G.E.O. no. 8/2009, the validity period of the holiday vouchers issued between March 2019 - December 2019 and January 2020 - November 2020, regardless of their support, is extended until December 31, 2021.

# VOICU FILIPESCU

Attorneys at Law

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Also by way of derogation from the provisions of the G.E.O. no. 8/2009, in 2021, for military personnel, police officers, civil servants with special status in the penitentiary administration system and civilian personnel in public institutions of defence, public order and national security, the tourist services provided by any tourist reception structure located on the territory of Romania, are settled within the limit of Lei 1,450 for each employee.