



employment - legal changes published in May 2021

Government Emergency Ordinance no. 36/2021 on the use of advanced electronic signature or qualified electronic signature, accompanied by the electronic time stamp or qualified electronic time stamp and the qualified electronic seal of the employer in the field of labour relationships, and for amending and supplementing some normative acts was published in the Official Gazette of Romania, Part I, no. 474 of May 6, 2021, entering into force on the same date.

The Ordinance implements a number of important changes in the field of labour relationships, as follows:

I. Amendment of the Labour Code

a) Aspects related to the electronic signature – the following are established:

- the parties may choose to use, at the conclusion of the individual employment contract /addendum to it, as appropriate, the advanced electronic signature or qualified electronic signature, accompanied by the electronic time stamp or the qualified electronic time stamp and the qualified electronic seal of the employer [all these concepts are defined in Regulation (EU) No. 910/2014 of the European Parliament and of the Council of July 23, 2014];
- the employer may choose to use the advanced electronic signature or the qualified electronic signature, accompanied by the electronic time stamp or the qualified electronic time stamp and the qualified electronic seal of the employer, for preparing all the documents/ acts in the field of labour relationships resulting from the conclusion of the individual employment contract, during its execution or at the termination of the individual employment contract, under the conditions established by the Internal regulations and/ or the applicable collective labour contract, according to the law;
- the individual employment contracts and the addenda concluded using the advanced electronic signature or the qualified electronic signature, accompanied by the electronic time stamp or qualified electronic time stamp and the qualified electronic seal of the employer, as well as the documents/ acts in the field of employment relationships are archived by the employer in compliance with the provisions of the Law on National Archives no. 16/1996 and of Law no. 135/2007 regarding the archiving of documents in electronic form and will be made available to the competent control bodies, at their request;
- the written form of the documents required by this law is also considered fulfilled if the document is drawn up in electronic form and is signed with advanced electronic signature or qualified electronic signature, accompanied by electronic time stamp or qualified electronic time stamp and qualified electronic seal of the employer, under the conditions of the law;
- in the employer's relations with the public authorities, when preparing documents/ acts in the field of labour relationships/ security and health at work, the employer may use the advanced electronic signature or the qualified electronic signature, accompanied by the electronic time stamp or the qualified electronic time stamp and the qualified electronic seal;
- the employer may not oblige the person selected for employment or, where appropriate, the employee to use the advanced electronic signature or the qualified electronic signature, accompanied by the electronic time stamp or the qualified electronic time stamp and the employer's qualified electronic



seal, at the conclusion of the individual employment contract/ addendum to it or of other documents issued in the performance of the individual employment contract, as appropriate;

- at the conclusion of the individual employment contract/ addendum to it or of other documents issued during the execution of the individual employment contract, the parties must use the same type of signature, i.e. handwritten signature or advanced or qualified electronic signature, accompanied by the time stamp electronic or qualified electronic time stamp and qualified electronic seal;
- the employer may bear, in order to fulfil the legal obligations referred to in this Emergency Ordinance, the costs of purchasing advanced electronic signatures or qualified electronic signatures accompanied by the electronic time stamp or the qualified electronic time stamp and the employer's qualified electronic seal used for the signature of documents/ acts in the field of labour relationships/ safety and health at work;
- among the elements on which the person selected for employment or the employee must be informed and which must be found in the content of the employment contract, the following was also introduced: "*the procedures for using the advanced electronic signature or qualified electronic signature accompanied by the time stamp electronic or qualified electronic time stamp and the qualified electronic seal of the employer.*"

b) Aspects related to working from home regime:

- the provision according to which the employees that work from home have the obligation to respect and ensure the confidentiality of information and documents used during the working from home regime was introduced.

II. Amendments of the Law no. 81/2018 on teleworking

- the phrase "*at least one day a month*" has been removed from the definition of the telework activity; the telework activity is therefore the form of organisation of work whereby the employee, on a regular and voluntary basis, performs the tasks specific to the function or occupation he/ she holds in a place other than the workplace organised by the employer, using the information and communication technology;
- it is provided that the verification of the activity of the teleworker shall be carried out by the employer mainly by the use of information and communication technology, under the conditions laid down in the individual employment contract, the Internal Regulations and/or the applicable collective labour contract, under the terms of the law;
- from the list of elements to be provided for by the employment contract/ addendum regarding the telework activity, the following was deleted: "*place/places in which the telework activity is carried on, agreed by the parties*" [art. 5 para. (2) letter c)];
- the obligation of the teleworkers to respect and ensure the confidentiality of information and documents used during the teleworking regime has been introduced.

III. Amendments of the Occupational Safety and Health Law no. 319/2006

- it is established that proof of occupational safety and health training to be provided to employees by the employer (as provided for in Article 20 of the Law) may be provided in electronic form or paper form depending on the manner chosen by the employer, as laid down in the Internal Regulations;



- in case the electronic form is used, the proof of training must be signed with an advanced electronic signature or a qualified electronic signature accompanied by the electronic time stamp or the qualified electronic time stamp and the qualified electronic seal of the employer.

Government Emergency Ordinance No. 37/2021 for the amendment and supplementation of Law no. 53/2003 - The Labour Code was published in the Official Gazette of Romania, Part I, no. 474 of May 6, 2021, entering into force from the same date.

Through the Ordinance:

- the provision according to which the elements from the information provided in para. (3) in art. 17 of the Labour Code must also be found in the content of the individual employment contract, except for the job description for the employees of micro-enterprises defined in art. 4 para. (1) leter a) of Law no. 346/2004 on stimulating the establishment and development of small and medium enterprises (micro-enterprises are defined as those enterprises that have up to 9 employees and achieve a net annual turnover or have total assets of up to EUR 2 million, equivalent in Lei), for which the specification of the duties of the job can be done verbally was introduced;
- there is an exception to the abovementioned rule: at the written request of the employee of a micro-enterprise, the employer is obliged to communicate to him/ her the job description in written form, specifying the duties of the job;
- it is established that, for the mobile employees, employees working from home and employees of micro-enterprises, the employer shall keep records of the daily worked hours by each employee under the conditions established with the employees by written agreement, depending on the specific activity carried out by them;
- another exception is established concerning the preparation of the Internal Regulations, namely: it shall be prepared by any employer, with the exception of micro-enterprises, in consultation with the trade union or the employees' representatives, as appropriate.

Government Decision no. 531/2021 on the extension of the state of alert on the territory of Romania starting with May 13, 2021, as well as the establishment of the measures to be applied during its period for preventing and combating the effects of the COVID-19 pandemic, was published in the Official Gazette of Romania, Part I, no. 488 of May 11, 2021, in force from the same date.

The Decision establishes that from May 13, 2021 the state of alert shall be extended by another 30 days throughout the country.

As a preliminary point, we mention that the Decision was subsequently amended by several legislative acts by which relaxation measures were established: Government Decision no. 550/2021 (published in the Official Gazette no. 506 of May 14, 2021, in force from the same date) and Government Decision no. 580/2021 (published in the Official Gazette no. 555 of May 28, 2021, in force since June 1, 2021).

The Decision stipulates that in public spaces, markets, fairs, flea markets, public transport stations, commercial spaces, means of public transportation and at the workplace, the obligation to wear a protective mask may be established so as to cover the nose and the mouth, under the conditions established by the joint order of the Minister of Health and the Minister of Internal Affairs.

Furthermore, for all public or private economic institutions and operators, the obligation to implement the working from home regime or teleworking is maintained, where the specific nature of the activity permits, under the conditions of Article 108-110 of the Labour Code, as well as those laid down by the Law no. 81/2018 on teleworking.



In the situation in which the employee cannot carry out the activity in teleworking/ working from home regime and in order to avoid the congestion of the public transportation, the employers in the private system, central and local public authorities and institutions, regardless of the method of financing and subordination, as well as the autonomous municipal companies, national companies and companies in which the share capital is wholly 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 schedule so that the personnel to be divided into groups to start or finish the activity at a difference of at least one hour.

It is also established that the organisation of work shall be carried out in compliance with the legal provisions issued by the competent authorities with regard to the prevention of SARS-CoV-2 virus contamination and for the safety and health at the workplace, taking into account also the degree of vaccination of the employees at the workplace, as reflected in a certificate of vaccination against the SARS-CoV-2 virus presented by the employees for whom 10 days have passed since the completion of the full vaccination scheme, as well as the number of employees who are between the 15th day and the 90th day following the confirmation of the SARS-CoV-2 virus infection and who hold and present to the employer a certificate issued by the family physician.

Law no. 138/2021 for the amendment of Article 34 of Law no. 153/2003 - the Labour Code was published in the Official Gazette of Romania, Part I, no. 501 of April 13, 2021, in force starting with April 16, 2021.

It is provided that, if the employer is in insolvency, bankruptcy or liquidation proceedings in accordance with the legal provisions in force, the judicial administrator or, where appropriate, the judicial liquidator shall be obliged to issue to the employees a document attesting the activity carried out by them, to cease and to transmit in the general register of employees the termination of individual employment contracts.

Order of the Minister of Health no. 699/67/2021 for the amendment of the Order of the Minister of Health and the Minister of Internal Affairs no. 874/81/2020 on the obligation to wear protective masks, epidemiological triage and mandatory hand disinfection to prevent contamination with the SARS-CoV-2 virus during the state of alert was published in the Official Gazette of Romania, Part I, no. 506 of May 14, 2021, in force from the same date.

It is established that starting with May 15, 2021 is implemented the obligation to wear a protective mask in enclosed public spaces, means of public transportation, at the workplace, commercial spaces, and in open public spaces, such as, but not limited to, markets, fairs, flea markets, shopping spaces, public transport stations, and other areas with the potential for crowds determined by decision of the county/municipal committee of Bucharest for emergencies situations.

General measures concerning wearing of the mask are also amended, providing that there may be the following exceptions from wearing it, depending on the risk assessment carried out by the unit's occupational medicine physician, namely:

- a) the employee is alone in the office / all the people in the office are vaccinated against the SARS-CoV-2 virus for whom 10 days have passed since the completion of the full vaccination scheme;
- b) the person suffers from diseases that affect the oxygenation capacity;
- c) the person carries out intense physical activities and/or in demanding working conditions (high temperatures, high humidity, etc.);
- d) TV presenters and their guests, provided that the distance of 3 metres between persons exists;
- e) children under the age of 5.



Order of the Minister of Health no. 700/68/2021 for the amendment of the Order of the Minister of Health and of the Minister of Internal Affairs no. 874/81/2020 on the establishment of the obligation to wear a protective mask, epidemiological triage and mandatory hand disinfection to prevent contamination with SARS-CoV-2 virus during the alert was published in the Official Gazette of Romania, Part I, no. 507 of May 15, 2021, in force from the same date.

The Order reviewed one of the exceptions to the mandatory wearing of the mask at the workplace. Specifically, it is stipulated that the protective mask should not be worn if the employee is alone in the office. Previously, the exception consisted of 2 alternative situations (regulated by the Order of the Minister of Health no. 699/67/2021 mentioned above): either the employee is alone in the office, either all the people in the office are vaccinated against the SARS-CoV-2 virus for whom 10 days have passed since the completion of the full vaccination scheme.