



## employment - legal changes published in May 2023

**Government Emergency Ordinance no. 42/2023 amending and supplementing Law no. 367/2022 on social dialogue and Law no. 53/2003 - Labour Code** was published in the Official Gazette, Part I, no. 459 of May 25, 2023, in force from the same date.

The Ordinance brings a series of amendments to Law no. 367/2022 on social dialogue, the most relevant being the following:

- The collective bargaining sectors will be approved by Order of the Minister responsible for social dialogue, unlike the old regulation which provided that they were approved through a Government Decision;
- It is established that during the period in which a person is elected to the governing body and is paid by the trade union organisation, upon its notification, his/her individual employment contract or work relation shall be suspended in accordance with the provisions of the Labour Code;
- The special register of trade unions kept by the District Court must contain, in addition to the old regulation, the trade union position of the members;
- At the level of collective bargaining sector or group of units, only trade union organisations which have the legal status of a trade union federation are representative, thus removing the representativeness of trade union organisations which have the legal status of a trade union;
- The competent court for determining whether trade union organisations fulfil the conditions of representativeness is established, as follows:
  - a) The Bucharest Tribunal for trade union organisations at national level and at collective bargaining sector or unit group level;
  - b) The District Court in whose territorial jurisdiction the organisation is based, for trade union organisations at unit level.
- It is established that the proof issued by the Territorial Labour Inspectorate following the submission of the copy of the file for obtaining representativeness by the trade union or federation is mandatory for the acceptance of the representativeness file by the District Court;
- In relation to the provision that an employer may be affiliated to more than one patronage, the new regulation states that for the purposes of determining representativeness in a collective bargaining sector, an employer may be represented by only one patronage, employers' federation or employers' confederation, as the case may be;
- According to the new regulation, the application for acquiring the legal personality of the employers' organisation must be accompanied by two copies signed for conformity with the original on each page (in the old regulation it



was necessary to attach the original and two copies) and the following documents, in addition to those provided for in the previous regulation:

- a) the minutes of incorporation of the employers' organisation, signed by the founding members;
  - b) the decision on the incorporation of the employers' federation or confederation;
  - c) decisions of employers' organisations to join a federation or confederation, signed by their legal representatives;
  - d) the final court decisions granting legal personality to the employers' organisations which form associations and the latest final court decisions amending their articles of association or the composition of their governing bodies, where applicable;
- The proof issued by the Ministry responsible for social dialogue following the submission of the copy of the representativeness file by the employers' federation or confederation is mandatory for the acceptance of the representativeness file by the Bucharest Tribunal;
  - A time limit of 15 calendar days from the date of the start of the negotiation procedures is established for the employer's obligation to convene all the parties entitled to negotiate and to organise the first negotiation meeting (in the old regulation the time limit was 5 calendar days and the obligation to organise the first meeting was not regulated);
  - In cases where small or medium-sized enterprises exist or are established in the collective bargaining sector, specific clauses applicable to each category of SME's will be included in all collective employment contracts concluded at collective bargaining sector or national level. Where no such clauses are included in the collective agreement, small and medium-sized enterprises are not obliged to apply the collective employment contract;
  - It is established that the nullity of a clause of the collective employment contract or collective agreement may be claimed by the parties concerned, by way of action or by way of exception, only for the duration of the collective employment contract;
  - According to the new regulation, collective employment contracts will not be registered unless they contain specific clauses applicable to each category of small and medium-sized enterprises;
  - During the period of participation to a strike, the employee's individual employment contract or work relation is suspended at the employee's initiative, unlike the previous regulation which provided for suspension as of right.
  - The Ordinance also brings a series of amendments to the Labour Code, the most relevant being the following:
    - Cases related to labour disputes will be settled in the first instance by the Tribunal. Claims may be submitted to the court in whose jurisdiction the claimant has his domicile, residence or place of work or, where appropriate, his registered office;
    - It is established that the time limit for appeal for claims related to the settlement of labour disputes is 10 days from the date of communication of the decision and that the decisions of the court of first instance are subject only to appeal.



**Law no. 140/2023 supplementing article 51 para. (1) of Law no. 53/2003 - Labour Code, for amending and supplementing article 514 of Government Emergency Ordinance no. 57/2019 on the Administrative Code, and for supplementing article 94 of Law no. 161/2003 on measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, prevention and sanctioning of corruption** was published in the Official Gazette, Part I, no. 461 of May 26, 2023, in force as of May 29, 2023.

The law establishes a new situation in which the individual employment contract may be suspended at the employee's initiative, namely when the employee carries out, based on a contract concluded in accordance with the law, a specific activity as a maternity assistant, personal assistant to a severely disabled person or professional personal assistant.

**Order of the Ministry of Labour and Social Solidarity no. 874/1429/2023 approving the procedure for implementing the provisions of Article IV para. (1) and (2) of Law no. 72/2022 on the cancellation of certain tax obligations and on the amendment of certain normative acts** was published in the Official Gazette, Part I, no. 395 of May 09, 2023, in force from the same date.

The Order approves the Procedure for the fiscal reclassification of the amounts granted in the form of delegation allowance, secondment allowance, including the allowance specific to transnational secondment, and the additional benefit granted under the mobility clause, received by employees, which may be carried out by the fiscal bodies pursuant to Article 11, para. (1) of the Tax Code following controls carried out by the competent bodies of the Labour Inspectorate, which ascertain the situations of delegation, secondment, transnational secondment in which employees may find themselves.

The territorial tax bodies of the National Tax Administration Agency shall request to the territorial labour inspectorates to carry out controls to establish one of the situations of delegation, secondment or transnational secondment in which the employees of the taxpayers in question find themselves in cases where, following risk analyses and controls carried out, such situations are identified, in order to confirm the nature of the income earned by the employees of the taxpayers in question,

The territorial labour inspectorates, during the controls carried out, ascertain the situations of delegation, secondment, transnational secondment in which the employees may find themselves, or the non-compliance with the legal provisions applicable to these situations, by drawing up control reports, thus confirming, on the basis of the documents submitted by the employer, the nature of the income granted in the form of the allowance for delegation, secondment, including the allowance specific to transnational secondment, and the additional benefit granted under the mobility clause. The control documents thus concluded shall be forwarded to the territorial tax bodies of the National Tax Administration Agency.

After receiving the control documents from the territorial labour inspectorates, the National Tax Administration Agency may carry out tax inspection actions in which it orders, where appropriate, the fiscal reclassification of the amounts granted in the form of the delegation, secondment or transnational secondment allowance, and the additional benefit granted under the mobility clause, received by employees, considering the observations made by the territorial labour

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