

Amendments in the labour law field - Law no. 283/2022 amending and supplementing Law no. 53/2003 - Labour Code, as well as Government Emergency Ordinance no. 57/2019 on the Administrative Code

General Considerations

On October 19, 2022, **Law no. 283/2022** was published in the Official Gazette, transposing into national law **Directive (EU) 2019/1152** on transparent and predictable working conditions in the European Union and **Directive (EU) 2019/1158** on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, which brings a series of substantial amendments and additions to the provisions of the Labour Code and the Administrative Code in order to comply and align with the legislative requirements adopted at EU level.

Law no. 283/2022 entered into force on October 22, 2022.

The main amendments implemented together with the entry into force of Law no. 283/2022, having an impact in the area of labour relations concern the following:

- **Clarifications on the area of applicability of the Labour Code**

Law no. 283/2022 expressly states that, as far as the area of applicability of the provisions of the Labour Code is concerned, it also covers employed persons (to be understood that, regardless of their nationality), who perform legal work for an employer headquartered in Romania.

- **Redefining the notion of „victimization" and forbidding the application of any unfavorable treatment to employees, following the exercise of their rights granted by law**

Under the new legal provisions, victimization is redefined as any adverse treatment that follows a complaint or referral to the competent bodies, respectively a legal action on a violation of legal rights or of the principle of equal treatment and non-discrimination.

Furthermore, it is expressly forbidden for employers to apply any unfavorable treatment to employees and their representatives following their exercise of rights granted by the Law, Internal Regulations, applicable Collective Bargaining Agreement and/or Individual Employment Agreement.

In addition, the new legal provisions expressly recognize in favor of the employee, the employees' representatives or the trade union members the right to benefit from protective measures against any adverse treatment applied by the employer, in cases where it lodges a complaint with the employer or initiates proceedings in order to ensure compliance with the rights granted by the Law, the Internal Regulations, the applicable Collective Bargaining Agreement and/or the Individual Employment Agreement. Also, the employee who considers that it was the victim of adverse treatment applied by the employer is entitled to refer to the competent courts with a claim for compensation and the reinstatement of the previous condition or the annulment of the condition created as a result of the adverse treatment, presenting the facts on the basis of which the existence of the respective treatment may be presumed.

- **Providing the employees with an updated and extensive information package**

The new legal provisions bring significant changes to the minimum content of the Individual Employment Agreement, as well as to the elements of which the employee must be informed prior to employment, as follows:

- **An express mention of the possibility of the employee to perform its activity in different places of work, and whether travel between them is ensured or settled by the employer, if applicable**

Furthermore, it is clarified that any employee has the right to work for different employers or for the same employer under individual employment agreements, benefiting from the corresponding salary for each of these, but only under the condition that the requirement of non-overlapping working hours is observed. The prohibition of unfavorable treatment of an employee exercising this right is also expressly regulated.

- **A separate recording of the base salary from its constituent elements (e.g., various allowances, bonuses) and mentioning the payment method**

Under the new provisions, the base salary as the fixed component of the remuneration granted to the employee must be provided for separately from its constituent and variable elements, which shall be each indicated and detailed separately.

As regards the salary, the Law provides, in addition, that the method of payment, in cash or by bank transfer, shall be expressly stated in the Individual Employment Agreement concluded with the employee.

- **An express reference to the conditions under which overtime is performed and compensated or remunerated and, where appropriate, to the arrangements for the organization of work in shifts**
- **An additional mention to the probation period of its conditions, if any (e.g., those conditions to be fulfilled by the employee in order to complete the probationary period)**

As regards the probationary period, the new provisions also set out the prohibition of establishing a new probationary period if, within 12 months, a new Individual Employment Agreement is concluded between the same parties for the same position and with the same duties.

- **An express mention in the Individual Employment Agreement of the right and conditions relating to professional training offered by the employer**
- **The mandatory requirement to include in the Individual Employment Agreement the employer's payment of private medical insurance, additional contributions to the employee's voluntary pension or occupational pension, in accordance with the law, as well as the granting, at the employer's initiative, of any other rights, when these represent cash benefits granted or paid by the employer to the employee as a result of its professional activity, as the case may be**
- **If the person selected for employment or the employee, as the case may be, will perform its activity abroad, the employer shall be required to inform the employee, in due time and prior to the date of departure, in addition to the period of activity, about and the country or countries in which the activity will be performed**

To the extent that the employer fails to properly fulfil its obligation to inform the employee of all the mandatory elements of the Individual Employment Agreement, the employee is entitled either to refer the matter to the Labour Inspectorate or to the competent court of law and claim compensation for the damage incurred as a result of the employer's failure to comply with the information obligation.

The elements of information regarding the individual employment contract to be concluded with the employee must also be found in the individual employment contract, except for the information related to the collective bargaining agreement that regulates the working conditions of the employee, the procedures regarding the use of the electronic signature, the advanced electronic signature and the qualified electronic

signature and the right and conditions regarding professional training offered by the employer.

- **Establishing new rights for the benefit of the employees and the conditions for granting/maintaining them**

The new legislative provisions provide for a series of new minimum rights granted to employees and expressly regulate the conditions for maintaining them, as follows:

- **The employee's right to apply for a transfer to a vacancy offering more favorable working conditions, if it has completed its probation period and has a seniority of at least 6 months with the same employer**

The employer is required to reply to the employee, in writing, within 30 days of receipt of the request, stating its reasons, whether it agrees or declines, as the case may be, to comply with the employee's request.

- **The employee's right to be absent from work in unforeseen circumstances caused by a family emergency due to sickness or accident which make the employee's immediate presence indispensable, provided that the employer is informed in advance and the period of absence is recovered until the employee's normal working hours are fully covered (according to a schedule agreed between the employer and the employee)**

The Labour Code sets a limit on the granting of this right, *i.e.*, no more than 10 working days in a calendar year, with the possibility for the employer to decide on the granting of this benefit for a longer period.

- **The employee's entitlement to carer's leave for the purpose of providing personal care or support to a relative or person living in the same household as the employee who is in need of care or support as a result of a serious medical condition, for a period of 5 working days in a calendar year, at the employee's written request**

It can be established by special laws or through the applicable collective bargaining agreement a more extensive duration of the carer's leave.

- **The express regulation in the Labour Code of the right of the employee to benefit from paid paternity leave and the conditions for granting it, with express reference to the provisions of Law no. 210/1999**

➤ **Inserting an express mention regarding the maintenance of the rights of employees whose employment relation is suspended**

The new provisions expressly provide that the rights of employees whose employment contract is suspended at their own initiative (*e.g.*, for child raising leave, accommodation leave, paternity leave, childcare leave) or who are absent from work in unforeseen cases caused by a family emergency due to sickness or accident, acquired by them prior to the granting of such leave/absence from work, shall be maintained for the duration of the leave or for the period of absence.

In addition, it is expressly provided that, for the purposes of determining the duration of the annual leave, periods related to parental leave, carer's leave and the period of absence from work in unforeseen circumstances caused by a family emergency due to sickness or accident, are considered periods of activity performed.

▪ **Provisions regarding the working hours**

The Labour Code defines for the first time the terms „**working hours**“ and „**work organization pattern**“.

Thus, under the new legal provisions, „**working hours**“ means the pattern of work organization that determines the hours and days when work begins and ends.

The "**work organization pattern**" is further defined as the form of organization of the working hours and its distribution in accordance with a certain pattern set by the employer.

In relation to the establishment of individualized work programs, at the employee's request or with the employee's agreement, the new legal provisions provide, in addition to the previous provisions, that individualized programs have a limited duration and that in cases where the employer refuses an employee's request to this end, the employee is required to justify its refusal, in writing, within 5 working days of receiving the request.

The flexible way of organizing the working hours is also defined and provides the possibility for employees to adapt their working hours, including through the use of remote work formulas, flexible work schedules, individualized work schedules or work schedules with reduced working time.

- **Provisions relating to dismissal of employees**

The new provisions expressly prohibit employers from dismissing employees during parental leave and carer's leave or during absence from work in unforeseen cases caused by a family emergency due to sickness or accident, which make the employee's immediate presence indispensable.

In addition, it is provided for the benefit of dismissed employees the right to request employers to provide *in extenso* the reasons for the dismissal (even in addition to what is stated in the dismissal decision itself). **In this respect, it is provided that employees who consider that they have been dismissed for exercising rights related to specific articles of the Labour Code may request the employer to provide, in writing, in addition to the dismissal decision, the reasons on which the dismissal decision was based.**

- **Provisions on the obligation for employees to update their Internal Regulations and to obtain the proof of its acknowledgment by the employees**

Under the new legal provisions, employers are required to update their Internal Regulations, the Labour Code adding two new chapters to its content, namely: a chapter on the rules on notice of dismissal and a second chapter on information on the general training policy for employees, if any.

In addition, the Labour Code requires employers to inform each employee of the provisions of the Internal Regulations on the first day of work and to provide proof of compliance with this obligation.

Employees may be informed of the provisions of the Internal Regulations on paper or in an electronic format, which is a novelty, provided that, in the latter case, the document is accessible to the employee and can be stored and printed by the employee. The Internal Regulations shall produce effects for the employee from the moment of acknowledgment.

- **Informing employees on the new conditions applicable to the employment relation**

For the employee who has an employment relation established prior to the date of entry into force of this Law, additional information on the conditions applicable to the employment relation shall be communicated by the employer, upon request, within a maximum of 30 working days from the date of receipt of the employee's written request.

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- **Establishment of a penalty regime for non-compliance with newly introduced rights and/or obligations**

Under the new provisions, failure to grant carer's leave or parental leave to employees who fulfil the conditions provided for by the law is sanctioned with a fine ranging from Lei 4,000 to Lei 8,000. The same fine is also applicable when the legal provisions regarding the equal treatment of the employees are not observed.

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