Employment

OVERVIEW

1. What is the legal framework regulating employment in Romania?

Romania is a civil law jurisdiction and the core employment regulation is the Labour Code. Besides the Labour Code, specific enactments regulate other labour-related aspects, such as health and safety in the workplace, insurance for work accidents and professional diseases and social dialogue.

Collective bargaining agreements also provide binding rules and obligations to be complied with by employers.

Considering Romania's membership to the European Union, EU law and CJEU decisions are also relevant.

INDIVIDUAL EMPLOYMENT AGREEMENTS

1. Is it mandatory to conclude written employment agreements with the employees? If yes, are there mandatory clauses or information to be included in the written agreement?

The individual employment agreement must be concluded in writing, based on the consent of the parties. Although the parties are obliged to conclude the employment contract in writing, the High Court of Cassation and Justice of Romania has recognised the employees' right to initiate a declaratory action in order to prove the existence and effects of an employment relationship, despite the fact that the parties did not conclude the agreement in writing.

Prior to concluding an employment agreement, the employer is required to inform each

employee of the general clauses to be included in such agreement.

The employer's failure to conclude written employment agreements constitutes an administrative offence.

Individual employment agreements must include the following mandatory data:

- The identity of the parties;
- The place of work or, if the workplace changes location, a provision that the employee may work from various places. Employees who perform work by using information and communications technology can perform work, theoretically, from any other place than the one made available by the employer, as provided in the employment agreement or addendum to the employment agreement ("teleworking");
- The position or occupation of the employee according to the specifications of the classification of occupations in Romania or other regulatory acts, as well as the job description;
- The evaluation criteria of the professional activities performed by the employee;
- The specific risks of the job position;
- The effective date when the agreement shall enter into force;
- The duration of the employment agreement when concluded for a fixed term;
- The duration of the rest leave the employee is entitled to;
- The duration and the specific conditions of the notice period (both for dismissal and for resignation);
- The wage, other elements of the wage, as well as payment terms;
- The working time, expressed in hours per day and hours per week;
- Provisions on the applicable collective bargaining agreement; and
- The duration of the trial period (if applicable).

Aside from these compulsory terms, the parties may also agree on any other terms (such as confidentiality, non-competition and intellectual property rights), provided they are no less favourable than certain statutory rights.

2. Can individual employment agreements be concluded for a fixed duration?

As a general rule, individual employment agreements are concluded for an indefinite period, but, subject to certain conditions, the parties may conclude employment agreements for a fixed term.

The maximum duration of employment agreements concluded for a fixed term is of 36

months.

In certain cases, the above term may be extended if the employment agreement was concluded to substitute a certain employee whose employment agreement was suspended for more than 36 months.

3. Is there a minimum level of rights and benefits for the employees provided by the law?

Employees cannot be given rights and benefits which are below the level established in the labour legislation and the collective bargaining agreements. Any derogations from or waivers of such rights shall not be considered valid, even if accepted by the employee or expressly provided in the individual employment agreement.

Besides the monthly remuneration received by employees in exchange for their work, there are also other benefits provided by the law such as mandatory bonuses (e.g. for overtime or night work, etc.); paid health insurance; childcare leave; disability leave; food, gift, nursery or holiday vouchers; holiday entitlement etc.

4. Which is the maximum trial period permitted by the law?

The trial or probation period cannot exceed 90 days for employees holding a non-management position, and 120 days for employees holding a management position. Other probation periods are provided by the Labour Code for specific situations. The employer cannot, however, extend the trial period at his or her sole discretion beyond the limits set forth by the law.

5. What is the regular working time? Is overtime allowed under the Romanian law?

Regular working hours is eight hours per day and 40 hours per week. For people under the age of 18, regular working hours means six hours per day and 30 hours per week. Employees' consent is required for overtime work.

The maximum work time is 48 hours a week, including overtime. Additional overtime is exceptionally accepted, provided that the average work time computed on a 4-month basis does not exceed 48 hours per week.

The employee or the employer cannot set up different working hours outside the legal

framework provided in this respect.

All categories of workers who perform overtime work are entitled to receive corresponding paid time off within the next 60 days after performing such work. If the compensation of overtime work with free paid days off is not possible, the employees are entitled to receive an allowance amounting to a minimum of 75% of the base salary for the overtime work performed. Overtime work is forbidden for minors.

6. Is the employees' right to annual vacation and holidays expressly regulated by the law?

The minimum paid leave provided under Romanian law is of 20 working days. A longer period for paid leave may be provided under collective bargaining agreements concluded at the levels of different industries or at company level.

As a rule, employees must take their annual leave every year. Exceptionally, where the employees for objective reasons cannot fully or partially exhaust their annual leave, the employer is obliged to grant the remaining annual leave within the next 18 months starting with the following year.

The duration of the annual leave cannot be affected by the employee's temporary disability, by maternity leave, maternal risk leave, or childcare leave. Such periods shall be deemed as periods of actual work.

Employees are entitled to annual leave even when their temporary disability lasts for a whole calendar year. In such a case, the employer shall grant the employee the annual leave within the next 18 months starting with the year following the medical leave. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated. In such cases, holiday entitlement is calculated on a pro rata basis with the time the employee has worked in that same enterprise during the respective year. In addition to the annual paid leave, employees can be granted paid or unpaid leave in certain circumstances.

Also, the Labour Code provides for a number of days off that must be observed by the employers. The following days are public holidays under the law: 1 and 2 January; 24 January; the Friday before Easter, the first and second Easter days; 1 May; 1 June, the first and second Pentecost days; 15 August; 30 November; 1 December; the first and second Christmas days; two days for each of the three religious holidays, other than the Christian ones, for the workers who belong to such faiths.

7. Is the employees' right to sick leave or sick pay expressly regulated by the law?

Romanian law recognises sick leave and the allowance for temporary incapacity for work. The allowance for temporary incapacity cannot exceed 183 days per calendar year running from the first sick day.

A longer period of paid leave is available for certain diseases, such as heart disease, tuberculosis and AIDS.

8. Is it possible under the Romanian law to impose any non-competition obligations on the employees?

Under the Labour Code, employees have a general obligation of loyalty towards their employers preventing them from performing similar activities for other employers throughout their employment.

The parties may agree to turn this obligation of loyalty into a non-competition obligation applicable after the termination of the individual employment agreement for a maximum of two years.

In such case, a monthly indemnification shall be granted by the employer to the employee for the entire non-competition period following employment termination, which indemnification cannot be less than 50% of the employee's average gross salary for the previous six months.

9. How can an employer terminate the individual employment agreement?

The employment agreement can only be terminated in specific and limited cases as provided by the Labour Code, always ensuring that procedural requirements are met. Romanian law recognises two main categories of dismissals: for causes unrelated to the employee (i.e. restructuring, redundancy); and dismissal for causes related to the employee.

Employers may undertake dismissals for causes unrelated to the employees where economic or operational reasons require a reduction in the number of jobs.

Dismissals for bad performance and for disciplinary reasons are among the most common types of dismissal for causes related to the employees.

In both cases, specific procedures must be followed. Employers' failure to comply with such procedures may trigger the annulment of the dismissal decisions in court. The same sanction shall apply if the employers cannot prove that the causes for dismissal are real and fall within the categories recognised by the Labour Code as entitling employers to perform dismissals.

Employers are obliged to observe a 20-day notice term for all categories of dismissal, except when the dismissal is done for disciplinary reasons or when the employee is arrested for more than 30 days.

10. Are there any special rules applicable to collective dismissals?

Special rules on collective dismissals provided by the Labour Code apply where, within a period of 30 days, the number of redundancies is of at least:

- 10 employees out of a total of more than 20 and less than 100 employees;
- 10% of the employees, where the total number of employees is of at least 100, but less than 300; or
- 30 employees out of a total of 300.

The procedure that must be followed in the case of collective dismissals entails prior information and consultations with the trade unions or the employees' representatives in respect to any available means of avoiding collective dismissals and the appropriate means for mitigating the consequences of the collective dismissals (such as support for requalification and professional retraining).

The labour authorities must also be informed in writing about the initiation and outcome of the information and consultation process.

11. Does the law provide for specific compensation to be paid to dismissed employees?

Employees whose individual employment agreements are terminated for reasons not related to their person, including those collectively dismissed, are entitled to receive severance payments according to the provisions of the applicable collective bargaining agreements (if any).

Such compensation is mainly computed based on the length of service.

FOREIGN EMPLOYEES

1. Which are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

For this specific issue, it is important to distinguish between EU, EEA and Swiss nationals and non-EU, non-EEA and non-Swiss nationals. EU, EEA and Swiss nationals have the right (subject to certain exceptions) to enter and work freely in the Romanian territory without the need to obtain a visa or a working permit.

For non-EU, non-EEA and non-Swiss nationals, working in Romania is permitted only for those who obtain a visa and a working permit. The following general and special conditions must be fulfilled in order for non-EU, non-EEA and non-Swiss nationals to be employed in Romania:

- The employer, legal person, authorized person or individual undertaking, performs, on the Romanian territory, activities compatible with the job position for which it requests the employment of the foreign citizen;
- The employer has not been finally convicted for a crime regulated by the Labour Code or for an intentional crime against a person, regulated by the Criminal Code;
- The vacancies cannot be filled by Romanian citizens or citizens of other EU Member States, of EEA countries or of the Swiss Confederation or by permanent residents of Romania;
- The employer intends to conclude a full-time individual employment agreement for a fixed term or indefinite period with a foreign citizen;
- The foreign citizens fulfil all the legal requirements regarding their entry and staying on the Romanian territory;
- The workers fulfil special conditions regarding professional qualifications, experience and authorisation required by the employer according to the legal provisions;
- The workers prove that their state of health is such as to enable them to carry out the relevant activity, and that they have not been convicted for crimes that are incompatible with the activity they carry out or intend to carry out in Romania;
- The number of admitted workers remains within the limits of the yearly contingency approved by government decision;
- The employer has paid its contributions to the state budget regularly throughout the last quarter;
- The employee shall effectively perform the activity for which it obtained the working permit, and
- The employer has not been sanctioned for undeclared work or illegal employment in the last 6 months.

The number of working permits issued every year is limited and determined by government decision. The employees working for a corporate entity with its seat in one jurisdiction may work for the same corporation with a second seat in the Romanian territory based on secondment permits which can be obtained following a similar procedure as in the case of working permits.

Hiring non-EU, non-EEA or non-Swiss nationals without a working/secondment permit constitutes misdemeanour and is punished by fine.

TRADE UNIONS

1. Is the employees' right to establish a trade union expressly provided by the law?

Employers cannot ban employees from establishing or joining trade unions, as such rights are guaranteed by the law. Nevertheless, a few conditions apply. A minimum of 15 people working in the same unit are required to set up a trade union. A person may only belong to one trade union organisation within the same employer at the same time. Certain categories, such as public officials, members of the military and members of certain government ministries may not establish trade unions.

In defending the rights of their members, trade unions are entitled to undertake any action provided for by the law. This includes the ability to bring court action on behalf of their members based on an express mandate from the persons concerned (the action cannot be brought to court or continued if the person concerned opposes or renounces the trial).

The trade union is entitled to receive from employer any necessary information for the negotiation of collective bargaining agreements and other agreements relating to employment relations.

Employees who are elected to the management body of a trade union are protected against all forms of constraint or limitation on the exercise of their functions.

In addition, the European Directive on the Establishment of European Works Councils has been implemented within Romanian law. The main provisions regulate the creation of a European works council (or an alternative procedure) for informing and consulting employees at the European level.

COLLECTIVE BARGAINING AGREEMENTS

1. Are collective bargaining agreements regulated by the Romanian law?

The Labour Code obliges companies with more than 21 employees to conduct collective negotiations in view of concluding a collective bargaining agreement.

The obligation is to carry out negotiations only, and not to actually conclude the collective bargaining agreement.

Collective bargaining agreements may be concluded at different levels: company, group of companies and industry/sector level. Collective bargaining agreements concluded at lower levels cannot provide for rights inferior to those set forth by those concluded at applicable higher levels.

The provisions of collective bargaining agreements are compulsory for the parties and apply to all employees, irrespective of whether they are members of a trade union or not. Collective bargaining agreements may be concluded for a minimum of 12 months and for a maximum of 24 months.

The parties may agree to extend the collective bargaining agreement only once, for a period not exceeding 12 months.

BUSINESS TRANSFERS

1. Is there any legislation to protect employees in the event of a business transfer?

The main enactments regulating the transfer of an undertaking, business or part of an undertaking or business are the Labour Code and Law No. 67/2006 on the safeguarding of the employees' rights in cases of transfer of undertakings, businesses or parts of undertakings or businesses (transposing Council Directive No. 2001/23/EC of 12 March 2001 on the approximation of laws of the member states relating to the safeguarding of employees' rights in the event of the transfer of undertakings, businesses or parts of undertakings or businesses).

Under the statutory protection rules in the event of transfer, the transferee is liable to observe the rights that the transferred employees had with the transferor under their

individual employment agreements and the applicable collective bargaining agreement. Both the transferor and the transferee shall be under the obligation to consult their employees about the transfer and to inform them on specific issues. For the purpose of the transfer, no consent from the employees is required.

However, the transfer of undertakings, businesses or parts of undertakings or businesses shall not be used as grounds for the transferor or the transferee to perform individual or collective dismissal of employees.

If a transfer involves a substantial change of work conditions to the detriment of the employee, the employer is liable for the termination of the individual employment agreement.

LABOUR CONFLICTS

1. Which types of labour conflicts are regulated?

Labour conflicts may regard collective or individual rights of the employees. Collective labour conflicts may occur when:

- The employer refuses to proceed with the negotiation of the collective bargaining agreement, where no such agreement was signed or the existing one has expired;
- The employer refuses to accept the employees' demands;
- The parties do not reach an agreement until the date set up for completing the collective negotiations.

Collective labour conflicts may culminate in strikes. As a matter of principle, strikes may be declared only in order to protect professional, economic and social interests of the employees and cannot have political goals. During strike, hiring employees to replace those on strike, or dismissing employees on strike, are strictly forbidden. Unlike other legal systems, Romanian labour legislation does not recognise the "lock-out" as a strike counter-measure.

Individual labour conflicts may occur whenever the employees' rights provided expressly by the law or by the applicable collective bargaining agreements are breached by the employer. Individual labour conflicts are settled amicably, through the conciliation procedure with the involvement of an external consultant specialising in labour law or directly by the courts of law.

2. May an employee agree to waive statutory and contractual rights?

Employees may not waive statutory rights provided in their favour by labour enactments. Any transaction seeking for the employee to waive his legal rights, or to limit such rights, shall be null and void. However, the law does not prohibit an employee from waiving contractual rights through negotiation with the employer.

3. What is the status of limitation for bringing employment claims?

The law provides for several time limits, considering the specific object of the claim:

- Claims referring to the conclusion, execution, suspension or termination of the individual employment agreement may be brought before the court within 45 days from the date when the employee became aware of the criticized measure;
- Claims referring to the payment of any compensation may be challenged within three years from the date the employee was entitled to ask for that compensation;
- Actions seeking nullification of an individual employment or collective bargaining agreement may be filed throughout the duration of that agreement; and
- Actions regarding failure to apply the collective labour agreement or clauses thereof may be filed within six months from the date on which the cause of action occurred.

COVID-19

1. What were the major changes brought by the COVID-19 crisis in the field? Will these changes stick?

- **Teleworking and working from home as a rule**

During the "state of alert" (which has been extended montly by the authorities in the past year and is currently in place until 15 April 2021, to be most likely extended yet again), employers must organize their employees' work schedules as telework or working from home.

If employees cannot fulfil their duties by telework or working from home, in order to avoid congestion in public transportation companies with more than fifty employees must by internal decision organize their employees' work schedulesso that they are divided into groups that start and finish work at least one hour apart.

As a general rule, teleworking can be adopted only after the conclusion of an addendum to the individual employment contract and when the duties specific to the position, occupation or profession that the employee holds involve the use of information and communication technology. The employer must provide employees with occupational safety and health training.

These obligations are incumbent upon the employer throughout the state of alert, under pain of a fine applied by the competent labour inspectors.

- **Mandatory health and safety measures for employers**

During the state of alert, employers must implement and ensure several other health and safety measures for the employees, such as the taking of temperature, hands disinfection, maintaining distance of at least 1.5m between employees, always wearing facemask and other measures related to the prevention of the spread of COVID-19. Disregarding such measures can be sanctioned by the competent bodies, according to the legal provisions in force.

- **Support measures for the employers during the state of emergency/alert**

During the state of alert, as well as for a 90-day period after its conclusion, the validity of collective labour agreements is prolonged.

Until 30 June 2021, employers may under certain conditions benefit of:

- 50% of the employee's salary, but no more than RON 2.500, for a period of 12 months, for each new hired employee who may be an individual over 50 years of age or a young individual of 16 to 29 years old, who became unemployed during the state of emergency or the state of alert, or Romanian citizens whose employment relationship with foreign employers has ceased for reasons not attributable to them;
- Partial settlement of the salary, in the amount of 45% of the base salary, without however exceeding 41.5% of the average gross salary established in Romania, for those employees with employment contracts concluded for a fixed period of maximum 3 months;
- Settlement of a part of the day laborers' remuneration, representing 35% of the remuneration due for the working day, for a period of 3 months;
- An indemnity borne by the Romanian State of 75% of the base salary, without however exceeding 75% of the average gross salary established in Romania, for the employees who have children under 12 years of age or children with disabilities under 26 years old, who benefit from paid days off, in case the competent authorities limit or suspend teaching activities performed in schools.