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CONTENTS

Romania

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Legislation and agencies

1 What are the main statutes and regulations relating to employment?

Romania is a civil law jurisdiction and the core employment regulation is the Labour Code. Besides the Labour Code, specific tailored legal enactments regulate other employment-related aspects, such as employment safety and health, insurance for work accidents and professional diseases, and employment conflicts and disputes. Collective bargaining agreements also provide binding rules and obligations to be complied with by the employers.

Finally, considering Romania's accession to the European Union, which took place on 1 January 2007, EU legislation and ECJ court decisions are also relevant.

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

General provisions on harassment and discrimination are applicable to all citizens in Romania. In addition, special provisions in respect of the employees are regulated under the Labour Code. Thus, all direct or indirect discrimination towards an employee, based on criteria such as sex, sexual orientation, genetic characteristics, age, national origin, race, colour of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities or trade union membership or activity shall be prohibited. Similar provisions exist in respect of harassment which is sanctioned as a civil misdemeanour.

In addition to the general prohibition on discrimination, an employer may not discriminate on the grounds of gender. Gender discrimination occurs if an employee is harassed or sexually harassed and there is a negative effect on the employee's remuneration if they refuse to accept the unwanted sexual conduct.

3 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The general protection of privacy and personal data provided by the law for all citizens is equally applicable to employees. Therefore, all personal data of employees is protected against any unlawful disclosure. Under these circumstances, the employer is under a legal obligation not to use or disclose any personal information relating to the employee, save for the cases where such use or disclosure is permitted by the law or the employee's consent has been obtained.

4 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The main responsible body for the application of the employment legislation is the Ministry of Labour, Family and Social Protection and its subordinated entities. Aside from the above, there are also other agencies responsible for the application of certain elements of employment law, such as the Romanian Immigration Office responsible for integration of foreign citizens in the labour sector.

Worker representation

5 Is there any legislation mandating or allowing the establishment of a works council or workers' committee in the workplace?

The rights to establish trade union organisations and become a member of such organisations are guaranteed under Romanian law. For such purpose, employers cannot ban employees from accessing trade unions. At least 15 people from the same branch or profession are required to set up a trade union, even if they are employed by different employers. A person may only belong to one trade union organisation at the same time and there are certain people, such as those holding management positions, public officials, members of the military and members of government ministries, who may not establish a trade union.

In defending the rights of their members, trade unions have the right to undertake any action provided for by the law. This includes the ability to bring a court action on behalf of their members without any express mandate from the persons concerned (although an action cannot be continued if the person concerned opposes or renounces the trial).

The representative trade union are entitled to receive from employers any necessary information for the negotiation of all collective bargaining agreements and other agreements relating to employment relations, as well as information relating to funds designated for the improvement of working conditions, employment protection and social utilities.

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

As regards works councils, 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.

Background information on applicants

6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

Under Romanian law, the individual employment agreement is to be concluded after the preliminary check of the professional and personal abilities of the applicant. The means of checking are provided under the applicable collective bargaining agreement and the internal regulations. Information on the applicant from former employers may only be requested as regards the position held and the length of the employment, subject to the applicant's consent.

The law is silent as regards the preliminary checks performed by a third party for the benefit of the employer, but they should be allowed within the same limits provided for the employer.

7 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

A medical certificate upon hiring an applicant represents a mandatory prerequisite for concluding an individual employment agreement, in order to determine if he or she is fit for the job position offered by the employer. The lack of such certificate shall trigger the nullity of the agreement. Therefore, the employer may refuse to hire an applicant who does not present a medical certificate when the individual employment agreement is agreed upon.

8 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are no specific provisions on drug and alcohol testing upon hiring under Romanian law. As a matter of principle, the employer could ask an applicant to submit only the medical exam provided by law upon hiring. Nevertheless, in practice, there are employers that use alcohol testing, but it is arguable whether the testing could be imposed on employees and whether the test results could be used against them (for example, for dismissing the employees).

Hiring of employees

9 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

Romanian law provides for certain incentives upon hiring in relation to certain categories of persons, such as disabled, unemployed or young persons. Furthermore, in respect of disabled persons, the law imposes on the employer an obligation to employ such persons making up at least 4 per cent of the total number of employees, if the employer has concluded individual employment agreements for more than 50 persons. Failure of the employer to observe such obligation shall amount to:

- a monthly payment to the state budget of a sum equal to 50 per cent of the minimum national salary for each job position that was not filled by disabled persons; or
- the acquisition of products or services manufactured or performed by the disabled persons employed within specific units protected by law, to an amount equal to the sum that otherwise would be owed to the state budget.

10 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

The individual employment agreement must be concluded in writing, based on the parties' consent. However, the lack of the written form does not trigger the nullity of the agreement. If the employment agreement is not concluded in writing, the parties can prove the existence of their agreement by any piece of evidence. On the other hand, the employer is required to inform each employee of the general clauses to be included in the employment agreement.

The compulsory terms to be included in the individual employment agreements are the following:

- the identity of the parties;
- the place of work or, if the work place is not stable, the provision that the employee may work at various places;
- 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 specific risks of the job position;
- the effective date when the agreement shall enter into force;
- the length of the employment agreement;
- the length of the rest leave the employee is entitled to;
- the length and the specific conditions of the notice term (both for dismissal and for resignation);
- the wage, other elements of the wage, as well as the payment terms;
- the working time, expressed in hours/day and hours/week;
- provisions on the applicable collective bargaining agreement; and
- the length of the trial period (if applicable).

Aside from these compulsory terms, the parties may also agree in relation to any other terms, provided that these terms are no less favourable then certain statutory rights. Such non-compulsory terms may refer to aspects such as confidentiality, non-competition and intellectual property rights.

11 To what extent are fixed-term employment contracts permissible?

As a general rule, the individual employment agreements are concluded for an undetermined period. By means of exception, the parties may conclude employment agreements for a determined period, subject to certain conditions. The maximum period of the employment agreements concluded for a determined period is 24 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 24 months.

12 What is the maximum probationary period permitted by law?

The trial period cannot exceed 30 days for employees holding a non-management position and 90 days for employees holding a management position. Other trial periods are provided by the Labour Code for specific situations. The employer cannot, however, extend the trial period at his sole discretion, beyond the limits set up by the law.

13 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Under Romanian law, the clauses restricting future activities of the employees are permitted with certain express limitations. Such clauses may refer to a non-competition obligation of the employees for a determined period, after the termination of employment relation with the employer.

Based on the provisions of the Labour Code, employees have a general obligation of loyalty towards their employers, preventing them from performing similar activities for other employers throughout the duration of the individual employment agreement. In addition, the parties may agree to turn this into a non-competition obligation, applicable after the termination of the individual employment agreement for a maximum of two years. In such a case, a monthly indemnification shall be granted by the employer to the employee for the entire non-competition period following the termination of the employment, which cannot be less than 50 per cent of the employee's average gross salary for the previous six months.

14 What are the primary factors that distinguish an independent contractor from an employee?

An employee is firstly and primarily subordinated to his employer while an independent contractor is not subordinated to the party with whom he has established a contractual relationship. Also, the employee is performing work based on an individual employment agreement, while an independent contractor is performing specific works or activities based on a service agreement or other type of agreement, different to employment. Different legal frameworks apply in the two cases.

Foreign workers

15 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

For this specific issue, it is important to distinguish between EU/EEA nationals and non–EU/EEA nationals. The EU/EEA nationals have the right (subject to certain exceptions) to enter and work freely in the Romanian territory without the need to obtain a visa. For non-EU/EEA nationals, working in Romania is permitted only for those who obtain a visa and a working permit. The number of working permits issued every year is limited and it is determined by a government decision. The employees working for a corporate entity having its seat in one jurisdiction may work for the same corporation having a second seat in the Romanian territory based on the secondment provisions.

16 Are spouses of authorised workers entitled to work?

EU/EEA citizens and the members of their families have the right to work and live in the Romanian territory in the same conditions as the ones recognised for Romanian nationals. As regards spouses of non-EU/EEA nationals, however, such persons do not enjoy the right to work in Romania, unless they obtain a working permit in their own name.

17 What 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?

The following conditions must be fulfilled in order for non-EU/EEA nationals to be employed in Romania:

- vacancies cannot be filled by Romanian citizens or citizens of other EU member states or EEA countries, or permanent residents of Romania;
- they fulfil special conditions regarding professional qualifications, experience and authorisation, required by the employer according to the legal provisions;
- the foreign workers prove their health ability for carrying out the activity under reference and they have not been convicted for crimes which are incompatible with the activity they carry out or intend to carry out in Romania;
- they are within the limits of the yearly contingency approved by government decision;
- the employers have regularly made contributions to the state budget; and
- the employer shall effectively perform the activity used to obtain the working permit.

There are no similar conditions provided for EU/EEA citizens.

As regards the sanction imposed on an employer who hires a non-EU/EEA national without holding a working permit, such act represents a misdemeanour and shall be punished by a fine.

18 Is a labour market test required as a precursor to a short or long-term visa?

As previously mentioned, the employer must provide evidence that the job positions to be filled by foreigners cannot be occupied by Romanian or EU/EEA nationals. There are, however, no express provisions requiring a market test.

Terms of employment

19 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Regular work time is eight hours a day and 40 hours a 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 three-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.

20 What categories of workers are entitled to overtime pay and how is it calculated?

All categories of workers who perform overtime work are entitled to receive free paid days within the next 30 days after performing such work. If the compensation of overtime work with free paid days is not possible, the employees are entitled to receive an allowance in amount of 100 per cent of the base salary for the work performed.

21 Is there any legislation establishing the right to annual vacation and holidays?

The minimum paid leave provided under Romanian law is 21 working days. A longer period for paid leave may be provided under the collective bargaining agreements concluded at different levels of the industry or at the companies' level. Also, the Labour Code provides for a number of days off that must be observed by the employers. The following days are declared holidays under the law: 1 and 2 January; first and second Easter days; 1 May; first and second Pentecost days; 15 August; 1 December; and first and second Christmas days.

22 Is there any legislation establishing the right to sick leave or sick pay?

Sick leave and the allowance for temporary incapacity of work is regulated under Romanian law. According to the legal provisions, allowance for temporary incapacity of work is granted for no more than 183 days per calendar year, running from the first sick day.

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

23 In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Under Romanian law, the employee is entitled to take non-paid leave for solving certain personal problems. The law does not provide a maximum duration of such leave, but it provides that the exact duration shall be determined within the applicable collective bargaining agreement or the internal regulations. During the non-paid leave, the employee is not entitled to receive any remuneration or compensation.

24 What employee benefits are prescribed by law?

Aside from the monthly remuneration received by the employees in exchange for their work, there are also other benefits provided by the law such as: mandatory bonuses; paid health insurance; childcare leave; disability leave; food, gift, nursery or holiday vouchers; part of the profit of the employer; holiday entitlement, etc.

25 Are there any special rules relating to part-time or fixed-term employees?

Under the Labour Code part-time and fixed-term employees shall enjoy all the rights of full-time or regular employees, which are stipulated by the law and the applicable collective bargaining agreements, although some rights will be adjusted to reflect the hours worked (eg, wages and holiday entitlement will be pro rata).

Liability for acts of employees

26 In which circumstances may an employer be held liable for the acts or conduct of its employees?

According to the general rules of civil law, employers are responsible for the damages caused by their employees in the exercise of their work duties. Therefore, the employer is liable to pay any compensations resulting from an employee's actions. However, the employer may request the employee to reimburse the employer for compensation paid as a result of the employee's action.

Taxation of employees

27 What employment-related taxes are prescribed by law?

The contractual payments made by the employer in consideration of the employment agreement are subject to income tax. Under Romanian law, the level of income tax is 16 per cent, which is applicable to the gross wage and related rights.

The employer must also pay social security contributions in relation to the employment agreement. The social security contributions (ie contributions to the social security system, contributions to the health system, contributions to the unemployment system) are owed both by the employee and the employer. The payment of such contribution is made solely by the employer, however. The aforementioned contributions are related to the salary granted by the employer to the employee in exchange for his work. The level of the social security contributions is mainly regulated by the Law on State Social Security Budget updated annually.

Employee-created IP

28 Is there any legislation addressing the parties' rights with respect to employee inventions?

In the absence of any contractual terms agreed by the parties within the employment agreement, there are statutory provisions which will apply to determine the ownership of IP rights. Although not mandatory, provisions on IP rights are commonly included within the individual employment agreements.

Business transfers

29 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 safeguarding of employees' rights in case of transfer of undertakings, businesses or parts of undertakings or businesses. The latter has transposed 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 transfer of undertakings, businesses or parts of undertakings or businesses. The above legislation provides for several protection rules in the event an undertaking or business or parts thereof are transferred from one employer to another.

In this respect, the transferee is liable to observe the rights which 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 the work conditions to the detriment of the employee, the transferee is liable for the termination of the individual employment agreement.

Termination of employment

30 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

The employment agreement can only be terminated in specific and limited cases as provided by the Labour Code, and the procedural requirements must be met. The main categories of dismissals regulated under Romanian law are dismissal for cause (restructuring) and dismissal without cause. Dismissal for cause can be done if economic or operational reasons prevent employers from maintaining the number of jobs. Dismissals for bad performance and for disciplinary reasons are among the most common types of dismissal for cause. 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 dismissal reasons are real and fall within the categories recognised by the Labour Code as entitling employers to perform dismissals.

31 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

If the employment agreement is terminated by the employer, the employee is entitled to prior notice. Therefore, the employers are obliged to observe a 20-day notice term for all categories of dismissal, except when the dismissal is done for disciplinary reasons. Under certain collective bargaining agreements, the employer has the option to pay in lieu of notice.

32 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

The employer may dismiss an employee without any notice in case of a dismissal for disciplinary reasons.

33 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Employees whose individual employment agreements are terminated without cause (for reasons not related to their person) are entitled to receive severance payments consisting of at least one monthly salary. Additional compensation is commonly regulated under collective bargaining agreements and is mainly computed based on the length of service.

34 Are there any procedural requirements for dismissing an employee?

There are specific procedures provided by law in case of dismissal for cause and dismissal without cause. In addition, if the number of redundancies throughout a period of 30 calendar days exceeds certain thresholds, the collective dismissal procedure shall be activated. Specific steps shall have to be observed and consultations with trade unions need to be conducted. Usually, the collective dismissal procedure last around 90 days to complete.

Mention should be made that no approval from a government agency is necessary in order to perform a dismissal. However, in certain cases the law imposes on the employer the obligation to inform the labour authorities before performing dismissals.

35 In what circumstances are employees protected from dismissal?

The employees are protected against unlawful dismissals in any circumstances where a dismissal was made by the employer without the observance of the legal provisions set up in this respect. Under Romanian law, the employers cannot terminate an employment agreement by means of instant dismissal for any reason whatsoever. If the employers want to terminate an employment agreement, they have to observe the procedures laid down by the Labour Code for such purpose. Also, the labour legislation provides for special protection against dismissals in certain cases such as:

- throughout the duration of a temporary disability of an employee, ascertained by a medical certificate, according to law;
- throughout the period when a woman employee is pregnant, to the extent that the employer had knowledge about the pregnancy before issuing the dismissal decision;
- throughout the duration of the maternity leave of the employee;
- throughout the duration of the leave of an employee for raising a child up to the age of two and, in case of a disabled child, up to the age of three;
- throughout the duration of the leave of an employee for taking care of a sick child up to the age of seven or, in case of a disabled child, for intercurrent diseases, up to the age of 18; and
- throughout the duration of the rest leave of the employee.

36 Are there special rules for mass terminations or collective dismissals?

Special rules on collective dismissals are provided by the Labour Code. Thus, the legal provisions regulating collective dismissals apply if, within a period of 30 days, the number of redundancies is:

- at least 10 employees, if the employer that performs the dismissals has more than 20 and less than 100 employees;
- at least 10 per cent of the employees, if the employer that performs the dismissals has at least 100 but less than 300 employees; or
- at least 30 employees, if the employer that performs the dismissals has at least 300 employees.

With regards to collective dismissals, the Labour Code for certain mandatory stages to be followed:

Stage 1

If the employer is contemplating collective dismissals, it has to initiate consultation with the trade unions or, as the case may be, with the employee's representatives. The consultation agenda shall cover at least any 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.

As the Labour Code requires employers to provide the employees with the opportunity to make constructive proposals, employers must provide the employee's representatives, in writing, with all relevant information regarding the procedure.

The consultations with the trade unions or employee's representatives will be initiated at least:

- 45 days before the issue of the dismissal decisions in the case of employers having less than 100 employees;
- 50 days before the issue of the dismissals decisions, in the case of employers having between 101 and 250 employees; and
- 60 days before the issue of the dismissal decisions, in the case of employers having more than 351 employees.

Update and trends

The possibility of amending the labour legislation in order to bring it in line with the necessities of the labour market is under discussion.

One of the topics discussed regards the possibility of terminating the employment agreement by means of instant dismissal. Such amendment to the Labour Code is justified by the difficulties encountered by employers when it comes to dismissals. In the actual form of the legislation, the employer must follow a strict and time consuming procedure in order to dismiss an employee, irrespective of reason. Supposing that such employee commits a severe and serious misconduct in respect of his employer, the latter is precluded from performing an instant dismissal; instead, the employer must follow a procedure which may amount to a big loss.

Another topic currently discussed regards the regulation of voluntary termination plans. Such plans, although not expressly regulated under Romanian law, are used in practice by employers to avoid collective dismissals. Regulation of such voluntary termination plans would benefit both employers and employees, by avoiding a difficult and time consuming procedure as the one provided by law in case of collective dismissals.

Stage 2

The employees' representatives have 10 days from receipt of the notice sent by the employers to analyse the information and the technical and economic substantiation of the dismissals, and to produce any appropriate proposals to avoid or reduce the collective dismissals.

The employer is obliged to respond to the proposals in writing, within five days.

Stage 3

Following the consultation process, if the employer decides to proceed with the collective dismissal, it must issue a second notice. This must reiterate all the elements included in the first notice, as well as the outcome of the consultations. This second notice must be submitted to the territorial labour authorities and to the employees' representatives at least 30 days prior to the issue of the individual dismissal decisions.

Stage 4

The employers will issue a dismissal decision for each of the affected employees 30 days after the second notice. Each decision must include:

- the reasons for dismissals;
- the notice period (20 days);
- the criteria for the establishment of the dismissal sequence; and
- a list of all vacant positions, if applicable, and the time within which the employees should express their intention to occupy a vacant position (if there are no vacant positions, this should be specified).

The dismissal decision is effective as of the date of acknowledged communication.

Stage 5

The dismissed employee shall be entitled to a notice period of 20 days. Upon expiry of the notice period, the employment relationship shall cease.

Dispute resolution

37 May the parties agree to private arbitration of employment disputes?

The parties may agree on arbitration as regards the conflict of interests, according to the terms set forth under the law.

The arbitration may be used at any time after the conciliation of conflict of interest. Conciliation is a mandatory stage in the

settlement process, while arbitration is only an additional option for the parties.

A conflict of interest may be initiated if the employer refuses to negotiate or sign a new collective bargaining agreement, refuses to initiate the mandatory annual negotiations or refuses to accept the employees' claims.

As regards the conflict of rights, disputes between an employer and an employee are usually resolved at work either informally or in a formal context by using the company's grievance or disciplinary procedure, or in court. In such case, the parties do not have the possibility of using arbitration.

38 May an employee agree to waive statutory and contractual rights to potential employment claims?

Under Romanian law, the employees may not waive the statutory rights provided in their favour by the labour enactments. Any transaction that aims to waive the rights recognised by the law to employees or to limit such rights shall be null. However, the law does not prohibit the employees to waive the contractual rights provided to them following a negotiation held between the employee and the employers.

39 What are the limitation periods for bringing employment claims?

The law provides for several time limits, considering the specific object of the claim. Therefore, the claims referring to:

- the execution, suspension or termination of the individual employment agreement may be brought before the court within 30 days from the date when the employee became aware of the disposed measure;
- the payment of any compensation may be challenged within three years from the date when the employee was entitled to ask for that compensation; or
- the declaration of the nullity of an individual employment or collective bargaining agreement may be requested during the entire duration of the agreement.

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