

# What is the new Labor Code bringing about?

The matter of increased flexibility of employment relationships has been intensely debated lately, and employers have challenged the various constraints and limitations imposed by the Labor Code. The legislative inflexibility of the regulations on employment relationships and the lack of options and solutions for particular situations that employers have to deal with has had a negative impact on the labor market's potential to attract investors in general and foreign investors in particular.

The amendments proposed by the Government in relation to the Labor Code are particularly focused on increasing the flexibility of certain regulations, so as to provide solutions supporting employers and stimulating labor efficiency and performance, also ensuring a higher employment rate.

Inter alia, the proposals for the amendment of the conditions concerning the employment for a definite term fall under the scope of the same matter. To be precise, it was considered to extend the maximum term of individual employment agreements concluded for a limited period, from the current 24 month-term, according to the current text of the Labor Code, to a 36-month term, and to regulate the possibility of executing such agreements for the particular term of certain projects. Such amendment is meant to satisfy a practical need, especially prominent in certain businesses, such as constructions, characterized by activity ups and downs, or where the activity to be carried out and the workforce need are tightly related to the development of particular projects.

In relation to alternative em-



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ployment options, derogating from the rule of the individual employment agreements concluded for an indefinite period, certain amendments were considered as regards temporary workforce, provided by employee leasing companies, to ensure the completion of certain projects/missions lasting for 36 months at the most, as compared to the maximum 18-month term stipulated by the current regulation.

Another significant amendment proposed by the new Labor Code version is that of the performance review as the main criteria in selecting employees to be dismissed under collective lay-off procedures, to be applied prior to other possible social criteria, reg-

ulated by the collective bargaining agreements. In other words, employers shall no longer find themselves forced to dismiss employees with good professional performance, if collective lay-offs are imposed by economic difficulties, for the mere reason that their social situation might be better than the social situation of certain less efficient employees, or employees with poorer professional training, which they are constrained to keep under their employment pursuant to the current regulation.

Moreover, as an alternative to lay-offs, the draft Labor Code provides employers with the possibility to reduce the work schedule from 5 to 4 days per week, applying an appropriate wage cut, in case of temporary downsizing. On the one hand, this amendment is meant to provide a solution to the difficulties encountered by employers in the current economic climate, and on the other hand to protect employees against lay-offs.

Other amendments concerning the termination of employment relationships concern the notice term in case of resignation. So far, the notice term for resignation was of 15 days for operating staff and 30 days for management staff, while the draft of the new Labor Code considered by the Government extends the first term to 20 days and the second one to 45 days.

As for employment per se, the Labor Code amendment draft is considering a series of changes, such as the extension of the trial period to 90 days at the most for operating staff, and respectively 120 days for management members.

One of the proposals in favor

of the employees is the provision on employee rehabilitation in case of misconduct. The disciplinary sanction enforced against an employee is to be de-registered within 12 months as of the application date thereof, provided that no new sanction has been applied in the meantime to such employee. Employees shall therefore be protected against the application of harsher punishments by the employers, in consideration of past sanctions.

Moreover, another aspect acknowledged by the new regulation to employees is the increase of the night work benefits, from the current 15% ratio to 25%. Thus, employees who work at least 3 hours during the night, benefit either from a reduction of the regular working schedule by one hour, or from a 25% bonus of the base wage.

In order to avoid abuse by employers and to ensure the observance of legal provisions on employment, the draft Labor Code tightens the applicable sanctions, as regards using workforce without executing individual employment agreements to such effect, or the failure to observe the national minimum wage rate.

The measures proposed for implementation under the Labor Code are part of the modernization process of the current regulation, devised to meet the current labor market needs, according to Romania's development stage and to the undertaken economic goals.

To what extent such amendments shall trigger positive changes in the investors' perception of the labor market, ensuring the better use of workforce, is yet to be determined.