

AMENDMENTS TO THE LABOUR CODE - IMPLEMENTING THE EUROPEAN DIRECTIVES ON INCREASING FLEXIBILITY AND TRANSPARENCY IN WORK RELATIONS.

NEW TEMPLATE FOR THE INDIVIDUAL EMPLOYMENT AGREEMENT

As of 22 October 2022, the provisions of Law no. 283/2022 amending and supplementing the Labour Code ("**Law 283/2022**") came into force.

Law 283/2022 transposes the provisions of Directive (EU) 2019/1152 and of Directive (EU) 2019/1158, with two sets of amendments:

- Directive (EU) 2019/1152 provides measures for increasing transparency and ensuring greater predictability for employees with respect to working conditions; and
- Directive (EU) 2019/1158 provides a number of measures for ensuring greater flexibility in work relations for parents and carers.

At the same time, Law 283/2022 also brings an **update to the individual employment agreement template**, to be approved by the Ministry of Labour within 30 days and published on the website of the Labour Inspectorate.

AMENDMENTS TO THE INDIVIDUAL EMPLOYMENT AGREEMENT

Transposing the provisions of Directive (UE) 2019/1152, Law 283/2022 includes a numbers of obligations for employers and clarifications as regards the individual employment agreement:

○ **Obligation to expressly and separately specify the elements of the remuneration**

Law 283/2022 introduces the obligation to mention expressly and separately in the individual employment agreement the basic salary, as well as all the elements it includes, such as some allowances, but also the inclusion in the employment agreement of any other rights, such as access to a private medical insurance or optional pensions, granted on the initiative of the employer as a result of the employee's professional activity.

Key issues:

- the content of the employment agreement and the obligation to inform employees have been extended. The Labour Inspectorate is to publish a **new employment agreement template** approved by the Ministry of Labour.
- **the employment agreement must expressly and separately reflect in writing all the elements of remuneration**, basic salary, bonuses, allowances, benefits, as well as elements such as access to private medical insurance.
- The Labour Code expressly provides **employees' right to obtain compensation from the employer in case of failure to comply with the obligation to inform** provided by law.
- **new rights are provided for employees in terms of making working hours more flexible and granting days off**: the right to request an individualised work schedule, the right to benefit from paternity leave, carers' leave or days off in case of emergency.
- employees' protection against measures taken by employers as a result of employees' exercise of their rights is strengthened by an **express prohibition on dismissal for the exercise of legal rights**.

The new provisions seem to oblige employers to reflect in writing in the individual employment agreement all remunerative elements, thus limiting the benefits that are granted in a discretionary manner by the employer. All the remuneration elements that are included in the individual employment agreement will be subject to change only with the employees' consent.

Any bonuses or benefits that are granted by the employer on criteria other than the employee's activity, for example depending on the volume of activity or the company's performance, continue to remain discretionary elements.

Another revision of the way in which remuneration is provided for in the individual employment agreement is necessary if, over time, employers included in the basic salaries various allowances, such as seniority allowance, management position allowance, work on weekend days allowance, mobility allowance, etc. Following the amendment of the Labour Code, employers will have to review remuneration policies and employment agreements in order to accommodate the granularity requirement introduced by Law 283/2022.

- **Including in the individual employment agreements all the elements subject to the employer's obligation to inform the employee. Employee's right to compensation.**

Law 283/2022 also provides new aspects about which the employer has the obligation to inform the employee before the start of the employment relationship, as well as in case of amending the individual employment agreement.

These include matters that were previously regulated by internal policies, such as the conditions under which work in shifts is carried out, the manner in which an employee without a fixed working place carries out his/her work and who bears travel expenses between the various locations of carrying out such activities, the right to and the training conditions offered by the employer.

All the aspects that are subject to the employer's obligation to inform the employee (less the details regarding professional training) will be reflected in the new individual employment agreement template to be approved by the Ministry of Labour.

Employers must ensure that employees are informed about the new aspects provided by law, even before the publication of the new individual employment agreement template.

According to the provisions of Directive (EU) 1152/2019, currently the Labour Code also includes a distinct right of employees to go against employers to obtain compensation in case the employer breaches its obligation to inform, as has just been strengthened by the new legislative changes.

MEASURES INCREASING WORK FLEXIBILITY

Law 283/2022 transposes the additional rights provided for in Directive (EU) 2019/1158 in an effort to address the changes taking place on the labour market and to maintain a work-life balance for employees:

- **Employees' right to request an individualised work schedule**

In implementing Directive (EU) 1152/2019, Law 283/2022 regulates employees' right to request the establishment, for a limited period of time, of an individualised work schedule. If the employer refuses such a request, it must provide reasons, in writing, for such refusal, within 5 days from the receipt of the request.

Employers will have to establish internal rules for granting individualised work schedules, so as to ensure compliance with the legal provisions, as well as transparency and objectivity in the treatment of requests from employees.

○ **Employees' right to have parallel employment agreements**

This issue required legal clarification for some time – the Labour Code provides for employees' right to have several parallel employment agreements concluded with different employers, but without overlapping work schedules under these agreements.

Law 283/2022 does not also contain an obligation for the employees to inform employers about the existence of parallel agreements.

Also, there are no specific sanctions for violation, by employees or employers, of the limits of these new provisions.

○ **Right to additional leave**

New leaves to which employees are entitled in certain situations are introduced:

- carer's leave, for a period of 5 working days in a calendar year, in order to care for the relatives of the employee/persons who lives in the same household as the employee lives if they suffer from a serious medical condition;
- paternity leave for a duration of up to a maximum of 15 working days, according to Law no. 210/1999, which is granted at the written request of the employee;
- the right to days off in the event of a family emergency caused by illness/accident, for not more than 10 working days in a calendar year. The employee must inform his/her employer in advance in this respect and recover the days off granted.

○ **Right to request transfer to another vacant position**

Employees with at least 6 months' seniority and whose probationary period has expired have the express right to request their employer to be transferred to another vacant position offering more favourable working conditions.

Although Directive (EU) 1152/2019 also provides for the right of the Member States to limit the number of such requests made by an employee – the Romanian legislator chose not to regulate such limitation.

Employers will be able to clarify the terms of exercising this right depending on the specific circumstances in each company. They also have the obligation to constantly inform employees about vacancies within the company.

Employers must respond in writing to such requests and provide reasonable explanations, within 30 days from the receipt of the request.

○ **ADDITIONAL PROTECTION FOR EMPLOYEES. PROHIBITION TO DISMISSAL**

Law 283/2022 also provides for an express protection of employees in the exercise of their rights: dismissal as a result of employees exercising their rights is prohibited.

Any unfavourable treatment of employees and employees' representatives as a result of requesting or exercising one of the rights provided by law is prohibited.

Any employee whose individual employment agreement is terminated or who believes that he/she has been/is subject to measures that negatively affect him/her may ask the employer for explanations and may challenge the respective measures in court, claiming that they were based on the employee's exercise of his/her legal rights. In case of dismissal, the employer is obliged to provide to the employee, upon request, in addition to the dismissal decision, the reasons on which the dismissal was based.

Employers must prove that the termination of the agreement or the taking of other measures was not determined by the employee's request or the exercise of his/her legal rights.

Unfavourable treatment to the employees/their representatives by the employer as a result of exercising the rights provided by law shall be sanctioned with **a fine between RON 4,000 and RON 8,000.**

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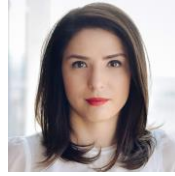
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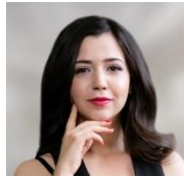
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