

An Overview of the Employment Environment in Romania

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1. The Labour Code and Employment Legislation

Romanian employer-employee relations are governed by the new Labour Code, entered into force on March 1, 2003 (“Labour Code”), other special laws and the National Collective Employment Agreement in force for the period 2007-2010. The changes operated in the Romanian employment environment by the Labour Code in 2003 were designed to perform the necessary alignment of the employment regulations to those in the European Union.

The Labour Code is applicable for Romanian employees under individual employment contracts, working either in Romania or abroad for a Romanian employer, as well as for Romanian employees working in Romania for a foreign employer. As regards the foreign personnel and the persons without citizenship, the Labour Code is applicable to their individual employment contracts if they are working on the Romanian territory and for a Romanian employer.

A number of framework provisions in the Labour Code have been further detailed and completed by subsequent special laws (e.g. protection of employees in case of business transfer, work safety, etc.) and by National Collective Employment Agreements. Taking into consideration that the Labour Code is not always consistent with the subsequent legislation, the applicable provisions in such cases are considered to be those more favourable to the employee.

2. The Employment Relationships in Romania

2.1 Salary

The average salaries in Romania are significantly lower by comparison to those of the Western European countries, and also below some of the salaries in Eastern Europe. In

September 2006, the average gross salary in Romania was RON 1,148 (approx. EUR 330) per month, and the average net salary was RON 860 lei (approx. EUR 245).

However, given the fact that in many industry areas the need for workforce is rapidly increasing, as the market is growing at a fast pace, the real average salary in some industry areas may easily go through significant rises compared to the amounts shown by the overall statistics. For example, in 2006, the highest net values for average salary were reported in the banking and finance sector (RON 2,300 – approx. EUR 680), while the lowest were registered in the wood products industry (RON 525 – approx. EUR 155).

With respect to the lower limits of the salary, the Labour Code guarantees a minimum gross salary amount, to be periodically established by the Government. For 2007, the minimum gross salary established by the Government Decision no. 1825/2006 was of 390 RON (approx. EUR 105), amount subsequently increased by the National Collective Employment Agreement to a minimum gross salary of RON 440 (approx. EUR 130).

In addition to slightly increasing the minimum salary at national level, the National Collective Employment Agreement also introduced hierarchy quotas to be applied to the minimum salary negotiated at company level. The respective quotas are dependent on the employee's degree of education necessary for a particular position. For example, unskilled workers have a quota of 1, skilled workers as well as high school graduates both have quotas of 1,2, while university graduates have a quota of 2. As such, the minimum gross salary that has to be paid to a university graduate employee is of RON 880 (approx. EUR 260).

2.2 Working Time and Holidays

The Labour Code provides a standard of 8 hours/day working time, and a working week of 40 hours, customarily scheduled as Monday to Friday, from 9 am to 5 pm. The total working time (including overtime) should not exceed 48 hours per week. However, a recent amendment to the Labour Code allows employees to work more than 48 hours weekly, provided that the average number of work hours, calculated for a reference period of three calendar months, does not exceed 48 hours per week. Overtime can be remunerated either by extra resting time or by extra payment.

As a rule, the individual employment agreement is concluded for an indefinite period of time. However, in specific cases that are limitedly provided by the Labour Code, individual employment agreements can be concluded for a determined period of time and a determined purpose (e.g. season activities or employee replacement during maternity leave).

According to the Labour Code, employees are entitled to a minimum of 20 days of paid holiday each year, in addition to the legal holidays (7 days), while the National Collective

Employment Agreement provides for 21 days per year. All paid holidays, together with any paid leave for various specific purposes (e.g. marriage, maternity or study leave) must be specified in the individual or collective agreement concluded at company level.

2.3 Equality of Treatment

The Romanian Constitution and Labour Code guarantee equal rights for all employees, regardless of gender, age, nationality, race, colour, origin, political or religious orientation, union membership. The Labour Code also emphasizes the principle of equal payment for equal work, providing that persons employed in the same position, performing the same work should earn the same base salary. Further anti-discrimination regulations have been introduced by a special enactment, namely the Government Ordinance no.137/2000 that prohibits all forms of discrimination and establishes the Romanian Council for Combating Discrimination, an authority subordinated to the Romanian Government which is responsible for applying Romanian and European Union anti-discrimination laws and managing the National Anti-Discrimination Plan.

In addition to the anti-discrimination policy, the more recent Law no.448/2006 on the protection and promoting of disabled persons' rights provides that after accession to the EU, Romanian employers with a staff of 50 or above are required to occupy a minimum of 4% of all positions within their company with disabled personnel. The employers that fail to observe such mandatory provisions shall be held to pay a monthly amount equal to half the minimum gross salary for each position that should have been offered to a disabled person.

2.4 Employee Health and Safety

The employee health and safety regulations in Romania are in strict accordance to the specific features of each industrial sector and are somewhat more permissive than the ones in most European countries. Under the more recent legal provisions, however, employers are bound to ensure the employees' access to specialized medical care, either by including in the staff a medical practitioner or by retaining such services from another employer or from an employers' association.

2.5 Employee Protection in case of business transfer

Further protection of the employees in Romania is ensured, after joining the EU, by Law no.67/2006, regarding the protection of employees in case of transfer of a business, unit or parts thereof, regardless of the social capital nature, to another employer, as a result of a merger or sale of social parts. As such, the transfer will not have negative implications on the employees, as their rights and obligations provided in the individual and collective employment agreements at the date of the transfer shall be assigned unmodified to the new employer. Furthermore, should the collective employment agreement of the new

employer comprise more favourable provisions for the employees, such provisions will be applicable.

2.6 Special Clauses in the Individual Employment Agreement

Apart from the general clauses and conditions to be included in the individual employment agreement, the Labour Code allows for individual employment contracts to include a series of special clauses, such as:

(i) a non-competition clause, that requires the employee to not provide, on his behalf or on someone else's, a service in competition with that provided to the employer and/or to not provide a service to another party that is in competition with the employer. Such clause represents a restriction of employee's working rights, that may be concluded for a period of maximum 2 years starting from the termination of the employment agreement;

(ii) a mobility clause, which entitles the employees to supplementary benefits in cases where the nature of the job requires them to travel between working places;

(iii) a confidentiality clause, whereby the employee agrees not to disclose specific information acquired as a consequence of the employment.

3. Specific legal provisions for Foreign Employees

3.1 Work Permits

The foreign persons that intend to work in Romania need to apply for a Romanian work permit. The main two types of work permits that can be obtained are the employment work permit and the secondment work permit.

The work permit for permanent employees (type A) allows the holder to conclude an individual employment agreement for a 12 month period, with the possibility of having such period extended for subsequent 12 month periods, with a single Romanian employer, or with the Romanian subsidiary or representative office of a foreign legal entity. Once a local employment contract is concluded between expatriates and a Romanian company, the expatriate becomes subject to the Romanian fiscal regime and regulations.

The work permit for secondment employees (type B) allows the holder to work in Romania on the basis of a secondment decision issued by a foreign employer, with a Romanian legal entity, or with the Romanian subsidiary or representative office of a foreign employer. Foreign individuals can be seconded to Romania for one year and are required to contribute to the health fund.

3.2 Residency Permit

Foreign citizens or persons without citizenship, who intend to stay in Romania for more than 90 days within a six-month period, need to apply for a temporary residency permit, unless otherwise provided in a relevant international bilateral agreement. Prior to applying for a temporary residency permit, a visa from the Romanian embassy or consulate in their country of residence must be obtained for entry to Romania. Exceptions from entry visa are established by the Ministry of Foreign Affairs.

4. The Unions and Employers' Associations

The unions were legislated by the Union Law no.54/2003, according to the provisions of which the unions are independent organizations, consisting of at least 15 individuals, working in the same industry, although not necessarily for the same employer.

Union rights include the possibility to file a court action defending union member interests even without a power of attorney in this respect, as well as the right to file legislative proposals in the union interest areas. Also, the employers have an obligation to invite union representatives to board meetings, as well as to notify the relevant board of administrators' decisions to the unions within 48 hours of passing them. The unions have the right to use specific means in order to protect the rights of their members, ranging from negotiation and mediation procedures to the organization of protests and strikes.

The employers' associations are legislated by employers' associations Law no.356/2001 as organizations that consist in either 15 or more legal entities or authorized persons in a certain economic field of activity, or 5 such members who hold over 70% of the production in a specific field. Employers' associations' rights include the possibility to sustain legislative proposals in their areas of interest, as well as the right to attend the negotiation and execution of collective employment agreements.

5. Social Security Contributions

The social security contributions cover pensions, child benefits, illness and other social care services, as well as minimal unemployment benefits, the amounts and conditions of which are focused on generating employment. Both employers and employees are required to contribute to the social security system, with quotas of their contribution based on gross salary percentages, as follows:

Employers' Contributions: (i) Social security - 19.65%, 24.65% or 29.65% depending on working conditions, with a cap of five times the national average gross salary, multiplied by the average number of employees; (ii) Health fund - 7%; (iii) Medical leaves - 0.85%; (iv) Salary Guarantee Fund - 0.25%; (v) Unemployment fund - 2.5%; (vi) Work accidents

insurance fund - 0.5% - 4%, depending on the risk category and (vii) Labour office commission - 0.25% - 0.75%.

Employees' Contributions: (i) Social security - 9.5% (this percentage applies to a base capped at five times the average gross salary for the respective year); (ii) Unemployment fund - 1%; (iii) Health fund - 6.5%.

Although the latter contributions are incumbent on the employees, it is the employer that has to retain the contribution sums when paying salaries (based on the "net salary payment" principle). The sums are payable by the 25th of the following month, and employer's failure to pay any of the above mentioned contributions within 15 days from their due date represents a minor offence.