LEGISLATIVE CHANGES IN THE FIELD OF LEGAL LABOR RELATIONS

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Abstract: *Interested economic agents, employees and all interested persons must be informed about the appearance of three normative acts that bring important changes in the field of labor legislation regarding the level of the minimum gross salary starting from 01.01.2023, the framework model of the individual contract of work and the approval of the annual quota of foreign workers admitted to Romania. Thus, starting from January 1, 2023, the gross minimum basic salary per country guaranteed in payment, provided for in art. 164 para. (1) from Law no. 53/2003 – The Labor Code, republished, with subsequent amendments and additions, is set in money, without including increments and other additions, at the amount of 3,000 lei per month, for a normal work schedule of 165,333 hours per month on average, representing 18,145 lei/hour. For the year 2023, a quota of 100,000 foreign workers newly admitted to the Romanian labor market is established.*

Key words: *labor legislation, worker, employer, law.*
Classification JEL: *KO, K1.*

1. Introduction

The changes brought by Law no. 283 of October 17, 2022 for the amendment and completion of Law no. 53/2003 - Labor Code, covers, among other things, the employee's right to request a transfer to a vacant position that provides him with more favorable working conditions if he has completed his probationary period and has been with the same employer for at least 6 months; in this case, the employer has the obligation to respond with reasons, in writing, within 30 days of receiving the employee's request. At the same time, the Labor Code stipulates that any unfavorable treatment of employees and employee representatives applied as a result of this request or the exercise of one of the rights provided by law is prohibited.

2. Changes in the field of labor legislation

From these provisions, specific derogatory provisions may be established by special laws only for the work or service relationships carried out by the personnel of the public emergency services, the personnel of the defense system, public order and national security, diplomatic and consular personnel, magistrates , the specialized auxiliary staff of the courts and the prosecutor's offices next to them, respectively for the service reports of public officials.

According to article 5 of the updated Labor Code[1], the principle of equal treatment of all employees and employers operates within labor relations. Any direct or indirect discrimination against an employee, discrimination by association, harassment or act of victimization, based on the criterion of race, citizenship, ethnicity, color, language, religion, social origin, genetic traits, sex, sexual orientation, age, disability , non-contagious chronic disease, HIV infection, political choice, family situation or responsibility, trade union membership or activity, membership of a disadvantaged category, is prohibited.

Direct discrimination is any act or deed of distinction, exclusion, restriction or preference, based on one or more of the criteria set out above, which has the purpose or effect of not granting, restricting or removing the recognition, use or exercise of the rights provided for in labor law.

Also, any apparently neutral provision, action, criterion or practice that has the effect of putting one person at a disadvantage compared to another person based on one of the criteria set out above constitutes indirect discrimination, unless that provision, action, criterion or practice is objectively justified by a legitimate aim and if the means to achieve that aim are proportionate, appropriate and necessary.

Harassment consists of any type of behavior that is based on one of the criteria aimed at discrimination and has the purpose or effect of harming the dignity of a person and leads to the creation of an intimidating, hostile, degrading, humiliating or offensive environment.

Discrimination by association consists of any act or deed of discrimination committed against a person who, although not part of an identified category of persons, is associated or presumed to be associated with one or more persons belonging to such a category of people.

Victimization is any adverse treatment, which comes as a reaction to a complaint or referral to the competent bodies, respectively to a legal action regarding the violation of legal rights or the principle of equal treatment and non-discrimination.

Article 6 (1) of the Labor Code provides that any employee who performs a job benefits from working conditions appropriate to the activity carried out, social protection, safety and health at work, as well as respect for his dignity and conscience, without any discrimination. All employees who provide work are recognized the right to collective negotiations, the right to the protection of personal data, as well as the right to protection against illegal dismissals.

For work of equal value or of equal value, any discrimination based on gender is prohibited regarding all elements and remuneration conditions. In the event that employees, employee representatives or trade union members submit a complaint to the employer or initiate procedures to ensure compliance with the rights provided for by law, they benefit from protection against any adverse treatment by the employer

The employee who considers himself the victim of an adverse treatment by the employer can apply to the competent court with a request for compensation and the restoration of the previous situation or the cancellation of the situation created as a result of the adverse treatment, with the presentation of the facts on the basis of which the existence of the respective treatment.

At the same time, the new legislative amendments also consider the express mention of the employee's possibility to carry out his activity in different workplaces, as well as whether the movement between them is ensured or settled by the employer, as the case may be.

The basic salary, other constituent elements of salary income, must be highlighted separately; as well as the frequency of salary payment to which the employee is entitled and the method of payment, as well as the duration and conditions of the trial period, if any. Regarding the trial period, the new legislative amendments establish that it is prohibited to establish a new trial period if, within 12 months, a new individual employment contract for the same position and with the same duties is concluded between the same parties

As well as the normal duration of work, expressed in hours/day and/or hours/week, the conditions for performing and compensating or paying overtime, as well as, if applicable, the ways of organizing work in shifts.

It is also clarified that any employee has the right to work for different employers or for the same employer, based on individual employment contracts, benefiting from the corresponding salary for each of them, but only under the condition of compliance with the requirement regarding non-overlapping work schedules . However, the prohibition to apply unfavorable treatment to the employee who exercises this right is also expressly regulated.

In addition to the old legislative provisions, the person selected for employment or the employee, as the case may be, will also be informed about the following elements:

- the right and conditions regarding professional training offered by the employer;
- the employer's bearing of private medical insurance, additional contributions to the employee's optional pension or occupational pension, in accordance with the law, as well as the granting, at the employer's initiative, of any other rights, when they constitute advantages in money granted or paid by the employer to the employee as a result of his professional activity, as the case may be; this information must also be found in the content of the individual employment contract.

Also, the individual employment contract is amended, and the Labor Inspectorate makes available to employees and employers the framework model of this contract, established by order of the Minister of Labor and Social Solidarity, by publishing it on the institution's website.

According to article 19 of the updated Labor Code, if the employer does not inform the employee about all the elements provided by law, he can notify the Labor Inspectorate; in the case of employers who have established their own inspection bodies by law, the employee addresses them.

If the employer does not fulfill its obligation to inform, the person selected for employment or the employee, as the case may be, has the right to refer the competent court and request compensation corresponding to the damage suffered as a result of the employer's failure to fulfill the obligation of information.

Regarding working time, Article 11 of the updated Labor Code states that

it represents any period in which the employee performs work, is at the disposal of the employer and fulfills his duties and responsibilities, according to the provisions of the individual employment contract, the applicable collective employment contract and/or the legislation in force.

The work schedule is the pattern of organizing the activity, which establishes the times and days when work begins and ends.

The work organization model represents the form of organization of working time and its distribution according to a certain model established by the employer. The employer can establish individualized work programs for all employees, including those who benefit from carer's leave, with their consent or at their request, which may have a limited duration.

Individualized work programs assume a flexible way of organizing work time. The daily duration of working time is divided into two periods: a fixed period in which the staff is simultaneously at work and a variable, mobile period in which the employee chooses his arrival and departure times, respecting the daily working time .

Any refusal of the request from employees to establish individualized programs must be motivated, in writing, by the employer, within 5 working days of receiving the request.

When the individualized work schedule has a limited duration, the employee has the right to return to the original work schedule at the end of the agreed period. The employee has the right to return to the original schedule before the end of the agreed period, in the event of a change in the circumstances that led to the establishment of the individualized schedule.

By flexible way of organizing working time is meant the possibility for employees to adapt their work schedule, including through the use of remote work formulas, flexible work schedules, individualized work schedules or work schedules with reduced working time .

Regarding leaves, the new amendments provide that, when determining the duration of annual leave, periods of temporary incapacity for work, those related to maternity leave,

paternity leave, maternal risk leave, leave for caring for a sick child, carer's leave are considered periods of activity performed.

The employer is obliged to grant carer's leave to the employee in order to provide care or personal support to a relative or a person who lives in the same household as the employee and who needs care or support as a result of a serious medical problem, lasting of 5 working days in a calendar year, at the written request of the employee.

The period of carer's leave is not included in the duration of annual leave and constitutes seniority in work and in the specialty.

By derogation from the provisions of Law no. 95/2006 on health reform, republished, with subsequent amendments and additions, employees who benefit from carer's leave are insured, during this period, in the social health insurance system without paying the contribution. The period of carer's leave constitutes a period of contribution for establishing the right to unemployment allowance and allowance for temporary incapacity for work granted in accordance with the legislation in force.

Serious medical problems, as well as the conditions for granting carer's leave, are established by joint order of the Minister of Labor and Social Solidarity and the Minister of Health.

The employee has the right to be absent from the workplace in unforeseen situations, determined by a family emergency caused by illness or accident, which make the immediate presence of the employee indispensable, provided that the employer is informed in advance and with the recovery of the absent period up to full coverage of the normal duration of the employee's work schedule.; in this case, the absence from work cannot last more than 10 working days in a calendar year.

The employer and the employee establish by mutual agreement the way to recover the period of absence.

For a better understanding, it is necessary to define some terms, as follows:

- The paternity leave is the leave granted to the father of the newborn child under the conditions provided by the Law on paternity leave no. 210/1999, with subsequent amendments and additions; the employer has the obligation to grant paternity leave at the written request of the employee, in compliance with the provisions of Law no. 210/1999, with subsequent amendments and additions, and the granting of this leave is not conditioned by the period of activity performed or the length of service of the employee;
- Carer's leave is the leave granted to employees in order to provide care or personal support to a relative or a person who lives in the same household as the employee and who needs care or support as a result of a serious medical problem;
- Carer is the employee who provides care or personal support to a relative or a person who lives in the same household as the employee and who needs care or support as a result of a serious medical problem.

According to article 243 of the Labor Code, the employer has the obligation to inform each employee of the provisions of the internal regulation, on the first day of work, and to provide proof of the fulfillment of this obligation.

Making employees aware of the provisions of the internal regulation can be done on paper or in electronic format, provided that, in the latter case, the document is accessible to the employee and can be stored and printed by him.

The internal regulation produces its effects in relation to the employee from the moment of his knowledge.

The service reports of civil servants can also be carried out telework, under the conditions provided by the Labor Code, as well as home-based work, according to the provisions of Law no. 53/2003, republished, with subsequent amendments and additions.

The activity carried out in the telework regime is based on the voluntary agreement of the parties and is carried out as a result of the approval by the head of the public authority or institution of the public servant's request.

The heads of public authorities and institutions establish by administrative act the structures within them, the activities, as well as the positions for which the telework activity can be approved.

The duration of the telework activity cannot exceed 5 days per month.

Carrying out teleworking activities can be approved for:

a) civil servants who have children up to 11 years of age;

b) civil servants who provide care to a relative, with whom they live in the same household;

c) civil servants who have a state of health that does not allow them to travel to the headquarters of the authority or public institution, for reasons determined by some serious illness, or in the event of pregnancy, proven by a medical certificate;

d) civil servants who carry out activities among those established by the head of the public authority or institution as being able to be carried out remotely.

Civil servants who work remotely have the following obligations:

a) to have all the necessary means to fulfill their duties according to the job description;

b) to respond to any request related to the professional activity received from hierarchical superiors, during working hours, sent by means of remote communication;

c) to comply with the rules contained in the Organization and Operation Regulation of the institution, the Internal Regulation, the rules regarding the protection of personal data and other applicable specific rules and procedures, as the case may be.

Public authorities and institutions at the level of which there are public servants who carry out their activity in a telework regime have the following obligations:

a) to verify the activity of civil servants, mainly through the use of information and communication technology;

b) to ensure the method of highlighting the hours of work provided in telework mode by civil servants;

c) to ensure that civil servants have the means related to information and communication technology and the functional, safe and necessary work equipment for the performance of work, or to make these means and equipment available to civil servants;

d) ensure that civil servants receive sufficient and appropriate training in the field of safety and health at work, in particular in the form of information and work instructions on the use of equipment.

During the exercise of telecommuting or work at home, civil servants benefit from all the rights recognized by law, with the exception of the increase for difficult, harmful or dangerous working conditions.

3. Conclusions

Interested economic agents, employees and all interested persons must be informed about the appearance of three normative acts that bring important changes in the field of labor legislation regarding the level of the minimum gross salary starting from 01.01.2023, the framework model of the individual contract of work and the approval of the annual quota of foreign workers admitted to Romania.

References:

1. Labor Code updated 2023. Law 53 of 2003, Published in the Official Gazette, no. 75 of February 5, 2003, updated on October 17, 2022 by Law 283 of 2022;
2. Law no. 283 of October 17, 2022 for the amendment and completion of Law no. 53/2003 - Labor Code, as well as Government Emergency Ordinance no. 57/2019 regarding the Administrative Code.