



EMCC

European Monitoring Centre on Change

Romania: Effects of non-compliance with dismissal regulations

[Go to list page](#)

Phase:

Type:

Management

Effects of non-compliance with dismissal regulations

Last modified: 22 August, 2017

Native name:

Codul muncii, Legea nr. 53/2003, republicată în Monitorul Oficial nr. 345 din 18 mai 2011

English name:

Labour Code, Law no. 53/2003, republished in the Official Gazette of Romania no 345 dated 18 May 2011

Article

78-80

Description

The dismissal ordered in non-compliance with the procedure stipulated by the law is considered void. Also, there are certain periods of the labour relation when dismissal is null and void:

- during the time of temporary incapacity of work, ascertained by medical certificate;
- during quarantine;
- during the period of pregnancy, as long as the employer is informed about this fact prior to issuing the decision of dismissal;
- during maternity leave;
- during childrearing and care giving leave until the child reaches the age of two or, in the case of a disabled child, until he or she turns three;
- during the care giving leave for a sick child up to the age of seven or, in the case of a disabled child, until he reaches the age of 18, due to recurrent episodes of illness;
- while on holiday;
- during maternal risk leave, as well as during the leave granted to those employees who have recently given birth or who are breastfeeding. The interdiction of dismissal can be extended only once, for up to six months, from the date the employee has returned to work within the enterprise.

In the event of a labour conflict, an employer may not resort, in a court of law, to other *de facto* or *de jure* reasons than the ones stated in the dismissal decision.

If the dismissal has not been based on good grounds or has been unlawful, the court shall order its cancellation and force the employer to pay a compensation equal to the indexed, increased and updated wages and any other rights the employee would have otherwise benefited from.

At the employee's request, the court having ordered the cancellation of the dismissal shall reinstate the worker in the exact position he or she had at the moment of the (void) dismissal. If such a request for reinstatement exists, the court will not have the right to express its opinion about the suitability or opportunity for reinstatement. Once the dismissal has been considered illegal and voided, the court is obliged to accept the employee's request to be reinstated. If another person has been employed in the same position in the meantime, his or her contract will automatically be terminated.

If the employee does not request reinstatement, his or her labour agreement shall end *de jure* on the date when the court decision is final. This amendment, introduced in 2011, resolves the controversial issue of the juridical ground of the case where the labour contract of the employee who obtained annulment of the dismissal may end in case the employee does not want to return to his or her job.

The provisions are applicable both for individual and collective dismissals.

Comments

According to article 60, paragraph 1 (g) of the Labour Code, individual or collective dismissal cannot include employees in elected positions within a trade union body. This prohibition was not limited to union activity, but could also have covered situations where the job was lost due

to economic factors. In a case challenging the constitutionality of this text, the Constitutional Court found that the provision affects the employer's property rights enshrined in the Constitution. As a result, through Decision no. 814/2015, published in the Official Gazette no. 950 of 22 December 2015, the prohibition of dismissal was declared unconstitutional. Only the prohibition of dismissal of union leaders for union activities remains in force, laid out in article 220, paragraph 2 of the Labour Code. Today, a dismissal affecting trade union leaders is considered valid, as long as it has nothing to do with the union activity.

Cost covered by

Employer

Involved actors other than national government

Other







Involvement others

Court

Thresholds

No, applicable in all circumstances

Sources

-  Ius Laboris (2009), Collective Redundancies Guide, Brussels
-  Eurofound (2009), Romania: The impact of the information and consultation directive, EIROnline articles
-  Labour Code, Law no. 53/2003
-  Codul muncii, Legea nr. 53/2003
-  Decision of the Constitutional Court no. 814/2015
-  Dimitriu, R. (2016), Romania, in Blanpain, R. and Hendrickx, F. (eds.), International Encyclopaedia for Labour Law and Industrial Relation, Wolters Kluwer
-  EMCC - Legal framework for restructuring

Useful? Interesting? Tell us what you think. 

Eurofound welcomes feedback and updates on this regulation

Your name *

E-mail *

More information?

Homepage

Subject

Comment *

Save

Preview

About EMCC

European Restructuring Monitor

- › [About the European Restructuring Monitor](#)
- › [Restructuring events database](#)
- › [Restructuring support instruments](#)
- › [Restructuring related legislation](#)
- › [Restructuring case studies](#)
- › [ERM publications](#)

European Jobs Monitor

Labour market research

Case studies

Future of Manufacturing in Europe (FOME)

European Observatory on Quality of Life - EurLIFE

European Observatory of Working Life - EurWORK

Quick links

- [Legal information](#)
- [Data protection](#)
- [Environmental policy](#)
- [Cookies](#)
- [Subscriptions](#)
- [Multilingualism](#)
- [Templates for Eurofound reports](#)
- [Eurofound style guide](#)
- [Management Board extranet](#)
- [Map - how to get to Eurofound](#)
- [FAQ](#)
- [Sitemap](#)



Contact us

Eurofound, Wyattville Road, Loughlinstown, Co. Dublin, D18 KP65, Ireland

Phone: (00) 353 1 2043100

E-Mail: information@eurofound.europa.eu

Press: media@eurofound.europa.eu



MEMBER OF THE NETWORK OF EU AGENCIES



EUROFOUND ACHIEVES EMAS REGISTRATION



EUROFOUND IS AN AGENCY OF THE EUROPEAN UNION



[Access to internal documents](#) | [Financial information](#) | [Archives](#) | [Information centre](#) | [RSS feeds](#)

© EUROFOUND 2023

