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Romania: Working time flexibility

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Romania

Phase:

Management

Type:

Working time flexibility

Last modified: 10 December, 2021

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 of 18 May 2011

Article

52 (3), 53 (1) and (2), 122 (3)

Description

In cases of temporary business slowdown for economic, technological, structural or other similar reasons, there are three possibilities available to the employer in terms of working time flexibility:

1. After consultation with the trade unions or workers' representatives, the employer may reduce working time from five to four days per week, in case of business slowdown over periods exceeding 30 working days. This may come with a corresponding reduction of salary, until the reasons that caused the reduction of working time are gone. So, workers will be paid less than before, proportionally to the reduction in working time. Depending on the circumstances of the reduction in activity, the working time can be reduced for all workers, or only for some of them - for instance, workers in a specific department.
2. During business slowdown and/or temporary interruption of operations, employers may suspend the employment contract of workers. In this case, the employees who are affected must receive a compensation (an allowance for technical unemployment), paid by the employer, that should not be less than 75% of their usual salaries. During this period, the employees must remain available for the employer, should the employer decide at any time to resume the activity. All social contributions have to be paid, except contributions to the unemployment insurance system. These latter contributions are not due because the employment is suspended during the period in which the employees receive the allowance for technical unemployment.
3. During periods of reduced activity, the employer has the possibility to grant paid holidays to compensate for the extra work to be done in the following 12 months. Normally, time off is granted after workers have provided overtime. This instrument enables the opposite: first, in periods of business slowdown, workers receive time off; and only after they perform extra work. It is used especially in shops and other economic entities with a large workload during holidays (for example, in shopping malls and supermarkets where, because of the large number of customers, employees are required to work more hours during holidays). The employees receive time off during less busy periods, then they work more hours in times of higher activity.

COVID-19 response

Since March 2020, workers' indemnity of at least 75% of their base salary during suspension of employment or reduction of activity due to the crisis, is covered by the unemployment insurance budget up to a maximum of RON 5,429 (€ 1,100) per month. Employers can, but do not have to, cover the difference if the indemnity is capped, to provide the worker with the 75% of their base salary. In order to receive the indemnity, employers have to submit a payment request to the local unemployment agency. The indemnity is subject to tax and social security contributions. The tax and social security contributions are covered by the employer.

Starting with 1 July 2021, the technical unemployment benefits are no longer paid from the state budget, and employers wishing to apply the measure of technical unemployment have to bear its own budgets. The facility has been extended successively since the beginning of the pandemic, and the last deadline for the possibility of receiving this state support due to the pandemic is 30 June 2021, in accordance with the Government's Emergency Order no. 211/2020.

The governmental wage indemnity for suspended or reduced activity is eligible for companies suffering from at least 25% reduced turnover due to the COVID-19 crisis.

Furthermore, a law for 'paid leave when schools are closed under exceptional circumstances' has been approved by the government (Law

no. 19/2020). The law aims at allowing at least one parent at home with children while the schools are closed. The law states that:

- Paid leave is granted only if the tasks associated with the employees' roles cannot be performed in 'working from home or teleworking conditions.
- Paid leave can be granted to only one of the parents, and only if the child in care is of maximum 12 years of age (or 18 years of age for children with a disability), who are formally registered as attending courses in a school.
- In some sectors, the parent's request for leave is conditioned by the employer's acceptance (national energy system units, operating units in the nuclear sectors, continuous fire units, health and social care units, telecommunications, public radio and television, rail transport, units that ensure the public transport and sanitation of the localities, as well as the supply of the population with gas, electricity, heat, and water).
- During such leave, employees will be entitled to a payment of up to 75% of the employee's base salary, but not more than 75% of the average gross salary in the economy. The allowance is subject to personal income tax and social security contributions (that is personal income tax, social security contribution, health insurance contribution and work insurance contribution). The net value of the allowance paid by the employer (the amount actually received by the parent) can be recovered from the Guarantee Fund for the payment of salary claims; the corresponding personal income tax and the social security contributions are borne by the employer. To recover the net allowance, employers should submit a request to the local, or to the Bucharest's, unemployment agency. This applies to all employees with children in their care.

Comments

Besides these legal developments, some decisions of the Supreme Court in Romania seem to emphasise the flexibility of contractual arrangements regarding working time. Thus, for example, the days established by law as official public holidays are not working days; using employees during these days is a breach of the law. However, the High Court of Cassation and Justice established by Decision 22/2015 of 19 October 2015 that the act of the employer to use workers on public holidays does not meet the elements of an offence if the employer has fulfilled the obligation to provide compensation with time off.

Cost covered by

Employer
National government

Involved actors other than national government

Trade union
Other

Involvement others

Workers' representatives, in case there is no trade union

Thresholds

No, applicable in all circumstances

Sources

- ▢ DG Employment, Social Affairs and Equal Opportunities/Héra (2011), Selected companies' legal obligations regarding restructuring
- ▢ Labour Code, Law no. 53/2003
- ▢ Codul muncii, Legea nr. 53/2003
- ▢ ERM database on restructuring support instruments: Temporary reduction of activity
- ▢ Decisia nr. 22/2015 a Inaltei Curtii de Casatie si Justitie (Decision 22/2015 of the High Court of Cassation and Justice)
- ▢ Clauwaert, S. and Schömann, I. (2013), The crisis and national labour law reforms: A mapping exercise, Country report: Romania, ETUI
- ▢ Monitorul Oficial, (no. 230/21.03.2020)
- ▢ Ordonanta de Urgenta nr. 32/2020 (Government Emergency Order 32/2020)
- ▢ Ordonanta de Urgenta nr. 30/2020 (Government Emergency Order 30/2020)
- ▢ ILO overview of policy responses to COVID-19
- ▢ OECD overview of policy responses to COVID-19
- ▢ Ordonanta de Urgenta nr. 211/2020 (Government Emergency Order 211/2020)
- ▢ Hotararea de Guvern nr. 217/2020 (Government Decision 217/2020)

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