

## Chapter 11

### Labor and Social Security

#### 1. General

The employment sector has undergone substantial changes in Romania, but at quite a slow pace. It took 31 years for the regulations containing principles of employment dated 1972, to be finally repealed and a new legal framework enacted. The new Labor Code – Law no. 53/2003 came into force on 1<sup>st</sup> March 2003 and has been amended several times since that date, the most recent amendment in January 2015 through Law no. 12/2015 for the amendment and completion of Law no. 53/2003. The Labor Code gathers under the same umbrella the principles of employment relationships, employment contracts, labor and rest, labor protection and health. Another core regulation in the labor field, Law No. 62/2011 on Social Dialogue applicable from 13 May 2011, republished and further amended, regulates social dialogue, trade unions, employers' associations and labor conflicts.

Activities in the field of labor and social security are also provided for as distinct items in the Governing Program adopted by the Romanian Government for the period 2013-2016. The aforementioned program provides, *inter alia*, as government objectives, creating a flexible legal framework for the increase of occupancy rates and the increase of competences and, as a result, the increase of labour productivity, simultaneously with a release of pressure on employers by a reduction of administrative barriers and social contributions.

#### 2. Main regulations

- The Labor Code, approved by Law No. 53/2003 (“**Labor Code**”);
- Law No. 62/2011 on Social Dialogue (“**Law No. 62/2011**”);
- Government Ordinance No. 25 /2014 on employment and secondment of foreigners on Romanian territory, and for the amendment and completion of certain enactments on foreigner’s regime in Romania (“**GO No. 25/2014**”);
- Government Emergency Ordinance No. 102/2005 on the free movement on the territory of Romania of the citizens of European Union, European Economic Area or of Swiss Confederation (“**GEO No. 102/2005**”);
- Law No. 67/2006 on the protection of employees’ rights in case of a transfer of undertakings, of units or part of those (“**Law No. 67/2006**”);

#### 3. Individual Labor Contract

##### 3.1. Form of the Individual Labor Contract

The individual labor contract is concluded based on the parties’ mutual consent, in writing in the Romanian language. The obligation to conclude individual labor contracts is incumbent on the employer. The written form is mandatory for the validity of the contract.

The acceptance at work of up to 5 persons without concluding an individual labor contract represents a minor offence and is punished with an administrative fine. The acceptance at work of more than 5 persons without concluding an individual labor contract, irrespective of the citizenship, represents a criminal offence and is punished by imprisonment from 3 months to 2 years or with a criminal fine.

### **3.2. Entering the labor contract**

#### **3.2.1. Prior information before entering the labor contract**

Before concluding or amending any individual labor contract, the employer must inform the applicant or the employee, as the case may be, on the general provisions it intends to insert/amend in the contract, such as: the parties' identity, work place details, the employer's residence or headquarters, criteria for the evaluation of the professional activities of the employee applicable at the level of the employer, risks of work, contract duration, position/occupation pursuant to the provisions of the Romanian Classification of Professions or pursuant to other enactments, the job description, terms and conditions of prior notice to be served by the contracting parties, the basic salary, other constitutive elements for the salary income, the periodicity of the payment of the salary, the duration of the holiday leave, the duration of work, the applicable collective bargaining contract, etc.

Any amendments of the elements of individual labor contracts during the performance thereto, shall involve the execution of an addendum to the contract within 20 working days from the date such a change occurred, except for cases when such a change is expressly provided for by law. Should the employer fail to observe the obligation to provide information, the applicant or the employee, as the case may be, is entitled to notify the competent legal court within 30 days and to request recovery of the damages incurred as a consequence of the employer's breach of its obligation to provide information.

The employer has the obligation, prior to the commencement of activity, to hand over to the employee a counterpart of the individual labor contract.

#### **3.2.2. Probation period**

During the execution of the labor contract, only one probation period may be established, that shall not exceed (i) 120 calendar days for management positions, (ii) 90 calendar days for executive positions, (iii) 30 calendar days for employees with disabilities.

For graduates of higher education, the first 6 months from the beginning of their employment in profession are considered as an internship period, except for professions where internship is regulated by special laws. At the end of the internship period it is mandatory for the employer to issue a certificate, certified by the competent territorial labor inspectorate from its headquarters.

Throughout or at the end of the probation period, the individual labor contract may be exclusively terminated based on a written notice, at the initiative of either party, without any reasons being necessary.

Successive employments of more persons under probation periods for the same position may be performed for a maximum period of 12 months.

### 3.3. Observance of minimum rights

According to art. 11 of the Labor Code, the provisions of the individual labor contract may not be contrary or grant rights to the employee below the minimum level established by the relevant legislation, or by a collective bargaining contract.

### 3.4. Special types of individual labor contracts

The Labor Code provides for the following types of individual labor contracts:

#### a) Labor contract for a determined period of time:

- (i) as a rule, a labour contract is concluded for an unlimited period; labor contracts for a determined period of time may be concluded only under terms expressly provided for by law;
- (ii) may not be concluded for a duration more than 36 months;
- (iii) may be extended, based on the parties' written agreement, for the period of performing a project, program or work;
- (iv) the same parties may successively conclude a maximum of 3 individual labor contracts for a determined period of time;
- (v) individual labor contracts for a determined period, concluded within 3 months of the termination of an individual labor contract for a determined period, are considered successive contracts and cannot have a duration longer than 12 months each;
- (vi) employers are bound to inform employees (by a notice placed on the employer's premises) on any vacancies existing or about to exist in the company, corresponding to their professional skills, and to ensure the access to such vacancies under equal conditions with those of employees hired with labor contracts for an unlimited period; a copy of the aforementioned notice must also be transmitted to the trade union/ employees' representatives.

#### b) Temporary labor contract:

- (i) is the work performed by a temporary employee who concluded a temporary labour contract with a temporary labor agent, and who is placed at the disposal of a final labor user to work temporarily under the latter's surveillance and coordination;
- (ii) is concluded for a period corresponding to the assignment provided in the hiring out agreement, but not exceeding 24 months, and may be extended for successive periods, which, added to the initial period of the mission, may not exceed 36 months;
- (iii) the temporary labor agent can conclude with the temporary employee an individual labor contract for an unlimited period, in which case the temporary employee remains at the disposal of the temporary labor agent between two assignments;
- (iv) after finishing his/her assignment, the temporary employee may be employed by the user;

- (v) the salary received by the temporary employee for each assignment shall be paid by the temporary labor agent, is established by direct negotiation with the latter, and cannot be lower than the minimum national gross salary. The salary received by the temporary employee for each assignment must also not be lower than the salary of the user's employee who performs the same or similar work as a temporary employee.

**c) Part-time individual labor contract:**

- (i) implies shorter working hours than normal work hours;
- (ii) the employer is bound to inform in due time (by a notice posted on its premises) a vacancy of any part-time or full-time jobs, in order to ease transfers from full-time jobs to part-time jobs, and vice versa; the aforementioned notice must be also transmitted to the trade union/employees' representatives.

**d) Individual labor contract for home work:**

- (i) implies performance by the employee of his/her specific work tasks at his/her home, he/she having the right to establish his/her own working timeframe;
- (ii) the employer has the right to check the employee's activity, according to the terms stipulated in the individual labor contract.

**e) Apprenticeship contract:**

- (i) is concluded for a determined period of time;
- (ii) the apprentice attends vocational training and works under the employer's authority.

### **3.5. Special provisions**

The parties may also negotiate certain specific clauses such as a professional training clause, non-compete clause, mobility clause, confidentiality, intellectual property, fidelity clause, etc.

#### **3.5.1. Non-compete clause**

The non-compete clause implies the employee's obligation, after the cessation of the individual labor contract, not to carry out any activity in his/her own interest or in interest of a third party, which may compete with the activity performed for the benefit of his/her employer.

This clause shall produce effects for a maximum of 2 years as of the contract's cessation, provided that: (i) the individual labor contract expressly mentions the activities forbidden to the employee after the cessation of the contract (ii) the employer grants an indemnification for the non-compete period, to be negotiated by the parties, amounting to at least 50% of the employee's average gross salary over the last 6 months prior to the cessation of the contract or, in case of the length of the contract is less than 6 months, of the employee's average gross salary over the entire duration of the contract (iii) the contract provides the duration for which the employee may not carry out the forbidden activities, the third parties in favor of which the aforesaid activities are forbidden, and the geographic area where the employee may be in competition with the employer.

From the employer's point of view, the non-compete indemnity is considered a deductible expense, as long as it is also taxed accordingly at the level of the employee (the indemnity is generally considered as income assimilated to salary income).

In certain cases of cessation by virtue of the law of the individual labor contract, or if the same ceases for reasons not related to the employee, the non-compete clause does not produce any effects after the termination of the individual labor contract.

The non-compete clause may not however result in a total prevention of the employee exercising his/her profession or vocation.

If the employee fails to observe the non-compete clause, he/she may be liable to pay back the indemnity that he/she has received, along with any damages caused to the employer.

### **3.5.2. Mobility clause**

Under the mobility clause, the parties may agree that, due to the work particularities, the employee is not obligated to perform his/her job tasks within a permanent location. Thus, the employee may benefit from additional allowances, in cash or in-kind. The amount of cash allowances or the forms of granting the in-kind allowances must be provided for in the individual labor contract.

### **3.5.3. Confidentiality clause**

Under a confidentiality clause, the parties may agree that, for the entire duration of the individual labor contract and for a certain period after its cessation, they will not disclose any data or information to which they had access while the contract was in force, according to the terms of internal regulations, of the collective bargaining contracts or of the individual labor contracts. Failure to observe this clause by any parties will result in the defaulting party's obligation to pay corresponding damages.

## **3.6. Salaries**

The salary includes basic salary, indemnities, bonuses, as well as any other additional payments, and is paid prior to any other debts of the employer.

Minimum salary levels are set out by the applicable collective bargaining contracts.

Individual salary levels are set out by individual negotiations between the employer and the employee.

The employer has the obligation to take all necessary measures to ensure salary confidentiality.

The employer may not negotiate and establish basic salaries below the national minimum gross salary under individual labor contracts.

Failure to observe the legal provisions regarding the payment of national minimum gross salaries represents a minor offence, and is sanctioned with an administrative fine. The repeated establishment of individual labor contract salaries under the level of the minimum gross national salary represents a crime and is sanctioned with imprisonment or a criminal fine.

For 2016 the national minimum gross salary starting May 1<sup>st</sup> was established at RON 1,250/month (approx. Euro 277) for full time jobs, *i.e.* an average of 169,333 hours/month, representing RON 7,382 lei/hour (Euro 1,640).

Payment of salaries is secured by the employer's obligation to contribute monthly to the Security Fund for salary receivables payment, resulting from individual labor contracts.

No withholding as damages caused to the employer may be made from the employees' salary, unless the employee's debt is outstanding and payable, and was considered as such by a final judgment. Such salary withholding, cumulated, cannot exceed half of the employee's net salary each month.

However, the damage produced by an employee from his/her fault and related to his/her work may be recovered by a parties agreement, provided that the value of the damage recovered does not exceed the equivalent of 5 minimum gross salaries per economy.

### **3.7. Working hours**

The normal working schedule is of 8 hours/day or 40 hours/week in average. For young people under the age of 18, the normal work time is 6 hours/day and 30 hours/week. Depending on the work features, employees may opt for an irregular distribution of working hours, yet with the strict observance of the normal working time of 40 hours/week. The maximum legal working time may not exceed 48 hours/week, including overtime. Exceptionally, working time may exceed 48 hours/week, provided that the average of working hours for a 4-month period does not exceed 48 hours/week. Through collective bargaining, contracts may be negotiated for other reference periods, under the conditions provided for by the law.

Employees who effectively and permanently perform their activities in work places with special conditions - harmful, hard or dangerous - are entitled to a decrease of work time to under 8 hours/day, under the law.

An employer may establish personalized, flexible working hours, with the employee's consent, or upon the request of an employee.

### **3.8. Paid leave**

#### **3.8.1. Annual leave**

The minimum annual leave duration is 20 working days. Employees working in hard, dangerous or harmful conditions, blind or disabled individuals, or young people under the age of 18 benefit from an additional annual leave of at least 3 working days.

The right to annual leave may not be the subject of any waiver, assignment or limitation.

The effective period of annual leave is stipulated in the individual labor contract, with the observance of the law and through applicable collective bargaining contracts. Part-time employees benefit from the same annual leave as do employees who work full-time.

Non-working legal holidays, and paid days off stipulated in the applicable collective bargaining contract, are not included in the annual leave. Furthermore, for determining the duration of annual leave, periods of temporary work incapacity, maternity leave, precautionary maternity leave, and leave for raising a sick child are considered as periods of activity performed.

As a general rule annual leave should be taken every year. In case employees, due to justified reasons, cannot take, fully or partially, the annual leave during the respective calendar year, with the agreement of the employee, the employers must grant the untaken annual leave within 18 months as of the next year.

Compensation in cash for untaken annual leave is allowed only in the case of the termination of an individual labor contract.

During the period of annual leave, employees benefit from an indemnity, which must not be lower than their base salary, indemnities and permanent bonuses due for that period. The indemnity for annual leave represents the daily average of the employee's salary rights for the last three months prior to the month when the leave is completed, multiplied by the number of annual leave days; such an indemnity must be paid at least 5 working days before the employee's departure.

### **3.8.2. Other paid leave**

The Labor Code grants employees the right to paid days off for special family events. Such events and the number of days off are set up by law, by the applicable collective bargaining contract, or by internal regulations.

### **3.9. Suspension of the individual labor contract**

Suspension of the individual labor contract may occur *de jure*, pursuant to the parties' mutual consent or at one of the parties' initiative.

An individual labor contract is *de jure* suspended, *inter alia*, during maternity leave and temporary working incapacity leave.

A contract may be suspended further through an employee's initiative, *inter alia*, for leave for raising children under the age of 2, for paternal leave, for participating in strikes and any other situations expressly stipulated by law.

An employer may suspend an individual labor contract, for example, during a secondment as well as during a temporary interruption or reduction of its activity due to economical or technological reasons.

In case of a temporary reduction of activity for more than 30 working days, the employer may, with the prior consultation of the trade union representative /employees' representatives reduce the work program from 5 to 4 days per week, with a corresponding salary decrease, until a solution of the situation which caused the reduction of the program.

During a temporary interruption and/or reduction of an employer's activity, employees engaged in the reduced/interrupted activity, who no longer work, are entitled to compensation amounting to at least 75% of their basic salary corresponding to the occupied work place, excepting the case provided above (a temporary reduction exceeding 30 working days).

### **3.10. Termination of individual labor contract**

An individual labor contract may cease either *de jure*, pursuant to the parties' mutual consent, on the date agreed by the same, or further to one of the parties' initiative, under the terms and conditions expressly provided for by law.

#### **3.10.1. Termination *de jure* of the contract**

Termination of the individual labor contract may occur *de jure* in certain cases, expressly provided for by the Labor Code, among which:

- (i) upon the decease date of the employee or of the employer as an individual person, as well as in case of the dissolution of the employer as a legal entity, as of the date the employer ceased its existence, pursuant to the law;
- (ii) on the date when the cumulative conditions of standard age and the minimum retirement subscription period are met; at the communication date of the retirement decision in cases of retirement for 3rd degree disability, partial anticipated retirement, anticipated retirement, retirement at the standard age with a reduction of the standard age for retirement; at the communication date of a medical decision ascertaining work capacity in case of 1st or 2nd degree disability;
- (iii) when a court grants the application for reinstatement in the position previously held by an employee illegally dismissed, commencing on the date the judgment becomes final;
- (iv) on the expiry date of the individual labor contract for a determined period of time.

### **3.10.2. Dismissal**

#### **a) Legal concept of dismissal**

Dismissal represents the cessation of the individual labor contract based on the employer's initiative, and may occur for reasons related to the employee, or for reasons not related to the employee.

Employees may not be dismissed in the following situations:

- (i) during an employee's temporary working incapacity;
- (ii) during pregnancy, if the employer was aware of the woman's condition before her dismissal;
- (iii) during maternity leave;
- (iv) during annual paid leave, etc.

These cases are not applicable when an employee is dismissed further to an employer's judicial reorganization, bankruptcy or dissolution, in accordance with the law.

Dismissed individuals will receive, as a rule, a prior dismissal notice of a minimum of 20 working days.

#### **b) Dismissal for reasons related to the employee**

The employer may resolve the employee's dismissal for reasons related to the employee in the following cases:

- (i) if the employee perpetrates a severe infringement or repeated infringements of labor discipline;
- (ii) in case the employee is in preventive arrest or arrest at his/her domicile, for more than 30 days;
- (iii) in case the employee is found out to have a physical and/or psychic inability;



(iv) if the employee is professionally unfit for the job.

**c) Dismissal for reasons not related to the employee**

This type of dismissal is determined by the cancellation of the position held by the employee for one or more reasons not pertaining to the employee.

**3.10.3. Collective dismissal**

**a) Notion**

Collective dismissal consists in dismissing, for reasons not related to employees, within a 30-day period, of at least 10 employees (for companies with 21-99 employees), 10% of the employees (for companies with 100-299 employees), or 30 employees (for companies with at least 300 employees).

**b) Procedure**

Collective dismissal involves consultations with the trade unions/employees' representatives on the methods and means to avoid collective dismissals, or to reduce the number of dismissed employees, and to mitigate the consequences thereof, and prior notifications to the trade unions/employees' representatives, the territorial labor inspectorate, and the territorial agency for professional occupation and training, on the intention of collective dismissal, the social protection measures taken, etc. The aforementioned notifications must provide, *inter alia*, the number and categories of employees to be dismissed, the criteria considered for establishing the order of priority of the dismissal, measures for mitigating the consequences of the dismissal, and compensation payments to be granted to dismissed employees, the date starting from or the period within which the dismissal will be performed. A dismissal decision during the collective dismissal procedure is individual and the serving of notices is mandatory.

**c) Limitations in case of the reactivation of cancelled jobs**

An employee dismissed by collective dismissal has the right to be reemployed with priority in the workplace reestablished in the same activity, without exam, competition or probationary period, within 45 calendar days from the dismissal date. The employee has a term of 5 calendar days from the communication of the recommencement of activity to express their written consent regarding the offered workplace. In case the dismissed employees, entitled to be reinstated in their jobs, refuse to be reinstated or do not express in writing their consent within the above mentioned term, the employer may employ other persons for the vacant jobs.

The provisions of the Labor Code on collective dismissal do not apply to employees from public institutions and authorities, or to individual labor contracts concluded for a determined period of time, except for cases in which these dismissals take place prior to the expiry date of such contracts.

**d) Social protection measures for persons whose individual labor contracts are terminated further to collective dismissals**

Dismissed employees benefit from active measures to fight unemployment, and may also benefit from compensation under the law and the applicable collective bargaining contract.

**e) Illegal dismissals**

In case of illegal or ungrounded dismissal, the Court may invalidate the dismissal, and bind the employer to pay damages equal to the employee's updated, increased salary, together with any other rights the employee would have benefited from should the dismissal not have occurred and, upon the employee's request, to reintegrate him/her in the position previously held. Moreover, the employee may request the equivalent of moral prejudice suffered for the fault of the employer.

An employer's failure to observe a reinstatement judgment constitutes a crime and is punished with imprisonment or a criminal fine.

If the employee does not request reinstatement prior to the issuance of the dismissal decision, the individual labor contract is terminated by virtue of law on the date the court decision is final and binding.

**3.10.4. Resignation**

Resignation represents a unilateral deliberate act of an employee who, by means of a written notification, informs their employer of the termination of his/her individual labor contract, upon the completion of a prior notice term. The employee is not bound to justify such a resignation.

The prior notice term is established by the parties to the contract, and cannot exceed 20 working days for executive positions, or 45 working days for management positions.

An individual labor contract is terminated on the expiration of the prior notice term, or on the date when the employer partially or totally renounces the prior notice term.

In case an employer breaches its obligations provided for in an individual labor contract, the employee is free to resign without serving prior notice to the employer.

**3.11. Social protection measures for employees, in case of transfer of business**

The transfer of business is regulated by the Labor Code and by Law No. 67/2006. The latter entered into force on January 1, 2007, and transposes the Council Directive 2001/23/EC on the approximation of the laws of Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Under Law No. 67/2006, a transfer is defined as the passing of an undertaking, or unit or part of those from the transferor's ownership into the ownership of the transferee, as a result of an assignment or merger, with the purpose of a continuation of the main or secondary activity, irrespective of obtaining any profit.

Both the Labor Code and Law No. 67/2006 provide that the rights and obligations of the transferor arise from individual labor contracts and from the applicable collective bargaining contract existing on the transfer date of the undertaking, and are fully transferred to the transferee. The transferee must observe the collective bargaining contract in force on the date of the transfer, until its termination. Such collective bargaining contracts can be re-negotiated, but no earlier than one year from the transfer date.

If the transferred business does not retain its autonomy after the transfer, and the transferee's collective bargaining contract is more favorable to the transferred employees, it applies to the transferred employees.

Law No. 67/2006 requires prior consultation with the trade unions/employees representatives of the transferor and transferee and their notification in writing (or the notification of the transferor and transferee employees, if the trade unions or employees representatives are not established) at least 30 days prior to the transfer date, regarding certain elements such as: (i) the transfer date or the proposed transfer date, (ii) the reasons for the transfer, (iii) the legal, economic and social consequences of the transfer for the employees, (iv) any measures to be taken with respect to the employees, (v) work conditions and work framing conditions, etc.

Law No. 67/2006 provides also an essential interdiction, namely that the transfer of undertaking cannot represent a reason for collective or individual dismissal of employees by the transferor or by the transferee. It is important to outline that the transferor may not dismiss its employees in order to facilitate the transfer of an undertaking.

If the transfer of an undertaking implies a substantial modification of the work conditions to the employees' detriment, the employer is responsible for the termination of individual labor contracts.

#### **4. Employees' liability**

##### **4.1. Internal regulations**

Each employer has to adopt internal regulations. The internal regulations cover issues such as: hygiene, labor health and safety, rights and obligations for both the employer and the employees, labor discipline, the criteria and procedures for the professional evaluation of employees, etc.

Internal regulations should be provided to employees by the employer and are binding on the employees on the date of their acknowledgement thereof. Internal regulations should be displayed within the employer's premises, and any interested employee may approach the employer on any provisions thereof, provided that he/she proves that the regulation infringes his/her rights.

##### **4.2. Disciplinary liability**

The employer has the disciplinary prerogative, being legally entitled to apply sanctions to any employee, whenever the employer finds out that such employee breaches his/her duties.

Disciplinary infringements are labor related deeds consisting of faulty actions or omissions of the employee, in breach with of legal provisions, internal regulations, the individual labor contract or the applicable collective bargaining contract, his/her superiors' orders.

The employer will establish the applicable disciplinary sanction, well balanced with the disciplinary infringement committed by the employee.

The employer may apply the following disciplinary sanctions:

- (i) written warning;
- (ii) demotion from his/her current position and the reduction of his/her salary in accordance with the new position, for maximum 60 days;
- (iii) decrease of the basic salary by 5-10% for a period of 1 to 3 months;

- (iv) decrease of the base salary and/or, as the case may be, of the management allowance by 5-10% for a period of 1 to 3 months;
- (v) disciplinary termination of the individual labor contract.

The disciplinary sanction is erased by virtue of law within 12 months as of its application provided that a new sanction was not applied to the employee within this period. The erasure of disciplinary sanctions is ascertained by a decision of the employer issued in written form.

Subject to absolute voidance, no disciplinary sanction excepting for a written warning may be imposed unless a prior disciplinary investigation is performed. The employee will be summoned in writing by the person empowered by the employer to perform the investigation. The employees' failure to answer such a summons without an objective reason may lead to the sanction being enforced without prior disciplinary investigation.

During prior disciplinary investigation, the employee may formulate and sustain any defense in his/her favor and offer all proofs and motivations he/she considers necessary and may be assisted, upon his/her request, by a representative of the union he/she is part of.

An employer will impose the application of the disciplinary sanction by a decision issued in writing, within 30 calendar days from the date the employer was informed about the disciplinary infringement, but no later than 6 months after the date the infringement occurred.

#### **5. Foreigners and EU/EEA/Swiss Confederation citizens working in Romania**

Citizens of the European Union/EEA/Swiss Confederation Member States can enter and have residence rights in Romania if their stay is no longer than three months, without the requirement of additional conditions. For longer stays, EU/EEA/Swiss Confederation citizens who work in Romania need registration certificates issued by the Romanian Immigration Office.

Non-EEA citizens, non-EU citizens and non-Swiss Confederation citizens may work in Romania provided that they obtain a work/secondment notice (*"aviz de angajare/de detasare"*) from the General Inspectorate for Immigration.

A work/secondment notice is issued by the General Inspectorate for Immigration, and is valid for the entire duration of an individual employment agreement for a full time norm, concluded for a determined or undetermined period of time, subject to continuing work relations in the same position and for the same employer. The secondment notice is valid for a maximum of one year within a period of a minimum of 5 years. Among non-EEA citizens, non-EU citizens and non-Swiss Confederation citizens who can be employed in Romania without a work notice, are those who:

- (i) have a long-stay right on the Romanian territory;
- (ii) have acquired a form of protection in Romania;
- (iii) whose free access to the Romanian labor market is regulated by treaties concluded by Romania with other states;
- (iv) will perform teaching, scientific and other specific temporary activities in Romanian education institutions, based on reciprocal agreements, or as holders of temporary residence

rights for performing scientific research, , foreigners who perform artistic activities in Romanian cultural institution based on the order of the minister of culture, etc;

- (v) are going to perform on Romanian territory temporary activities requested by ministries or any other public institutions;
- (vi) are appointed head of subsidiaries, representative offices or branches of a company with headquarters abroad;
- (vii) are family members of Romanian citizens and have temporary residence rights for a family reunion;
- (viii) have temporary residence rights for studies.

The number of work/secondment notices that may be issued is limited annually by Government decision, depending on the concrete status of the Romanian labor market, and the policy in the field of labor force migration. For 2016, the Government established 5,500 work/secondment notices to be issued to foreign citizens intending to work on Romanian territory.

## **6. Collective bargaining contract**

### **6.1. Negotiation obligation**

Collective bargaining contracts may be negotiated at unit, groups of units or activity sectors level.

The criteria of affiliation to activity sectors is the main object of activity of the company registered with the Trade Registry.

The employer or the employer's association is bound to initiate collective negotiations only at a company level, except when the number of its employees is less than 21. The initiative of collective negotiation must be made at least 45 calendar days as of the expiry of the collective bargaining contracts, or as of the expiry of the applicability of the provisions of the addenda to the collective bargaining contracts.

In case the employer or the employer's association does not initiate collective negotiations, these are initiated upon the request of the representative trade union or of the employees' representatives, within 10 days from the date when the request was communicated.

Collective negotiations can exceed 60 calendar days only subject to the parties' agreement. Collective bargaining contracts may provide for the periodical renegotiation of any provisions agreed between the parties.

### **6.2. Execution of collective bargaining contracts**

Collective bargaining contracts are concluded for a determined period of time which cannot be shorter than 12 months or longer than 24 months. The parties may decide upon the extension of a collective bargaining contract only once, for a duration no longer than 12 months.

### **6.3. Collective bargaining contract content and registration**

A collective bargaining contract may not contain inferior rights to those established through a collective bargaining contract concluded at a superior level.

Upon the execution of a collective bargaining contract, legal provisions relating to an employee's rights have a minimal character.

- (i) collective bargaining contracts concluded at a company level and the addenda thereto must be concluded in written form and registered with the territorial labor inspectorate;
- (ii) collective bargaining contracts concluded at groups of units or activity sectors level, must be registered with the Ministry of Labor, Family and Social Protection and also published in Part V of the Official Gazette.

In case of contracts negotiated at activity sectors level, a collective bargaining contract is registered for the respective level only if the number of employees from the units members of the signatory employers' organizations exceeds half of the total number of the employees from the activity sector. Otherwise, the contract is registered as a contract concluded at groups of units level.

#### **6.4. Collective bargaining contract performance, amendment, suspension and termination**

The provisions of collective bargaining contracts produce effects as follows:

- (i) for all the unit's employee, in case of collective bargaining contracts concluded at this level;
- (ii) for all the employees of the units included in the group of units for which the collective bargaining contract was concluded;
- (iii) for all the employees of the units from the activity sector for which the collective bargaining contract was concluded, and that are part of the employers' associations that executed the contract.

The appliance of collective bargaining contracts registered at the level of an activity sector may be extended, under the conditions provided for by law, to the level of all units from the sector, based on an order of the Ministry of Labor, Family and Social Protection, with the approval of the National Tripartite Council, based on the request of the signatories of the collective bargaining contract at a sectorial level.

If, during the performance of a collective bargaining contract, the employer changes its main object of activity, the provisions of the collective bargaining contract concluded at the level of the activity sector in which the new object of activity is included are applicable.

The provisions of collective bargaining contracts may be amended during the contract's performance, in accordance with the law, whenever the parties agree on such amendments. Any amendments of collective bargaining contracts are applicable starting from their registration date, or upon a subsequent date, depending on the parties' agreement.

A collective bargaining contract will cease:

- (i) upon expiry of its term or upon achievement of the assignment the contract was signed for, if the parties fail to agree upon its extension;
- (ii) upon dissolution or liquidation of the employer;
- (iii) pursuant to the parties' agreement.

## **7. Labor associations**

### **7.1. Trade Unions**

A trade union may be set-up by minimum of 15 persons belonging to the same company. An individual may belong, at the same time, only to one trade union of the same employer.

Employed individuals, public officers and public officers with special statute, cooperation unit members and employed farmers have the right to set up a trade union and/or to adhere thereto.

In order to defend the interests of its members, a trade union may use specific union means, such as: negotiations, litigation solving procedures through mediation, conciliation, arbitration, petition, picket, march, meeting, demonstration or strike.

A trade union defends the rights of its members, resulting from the labor laws, public officer statutes, collective bargaining contracts and individual labor contracts, in front of a court or in front of state authorities or institutions. Representative trade unions are entitled to represent their members in collective bargaining contract negotiations.

Trade unions may associate depending on industry criteria in trade union federations/ trade union confederations/ territorial trade unions.

### **7.2. Employers' Associations**

Employers' associations are autonomous, apolitical, and set up based on the freedom of association principle, as legal entities of private law, for the purpose of defending and promoting the common rights and interests of their members. Employers' associations may associate, depending on industry criteria, into federations, confederations or territorial employer's associations.

An employer's association can be affiliated only to one superior employer's association.

### **7.3. The Economic and Social Council**

The Economic and Social Council was established, as a three-fold, autonomous public institution of national interest, meant to ensure tripartite social dialogue at a national level between the representatives of non-governmental associations and the foundations of the civil society, trade unions and employers' associations.

It is mandatory to consult the Economic and Social Council in regard to legal projects initiated by the Government, or by the chambers of senators and deputies, in its area of competence: economic, financial, fiscal, work relations, social protection, salaries and health policies, education, research or culture. The Council may refer matters to itself or may be notified by any public authority, employers' association or trade union representative at a national level, as well as by the representatives of civil society on facts, evolution or social-economic events of national interest on which the Council may issue opinions and recommendations.

### **7.4. Labor conflicts**

#### **7.4.1. Concept**

Work conflicts are conflicts between employees and employers related to the economic, professional or social interests or the rights resulting from work relations. Such conflicts can be:

- (i) collective work conflict is a labor conflict between employees and employers having as object the initiation, performance or termination of negotiations regarding collective bargaining contracts;
- (ii) individual work conflict is a labor conflict having as object the exercise of certain rights or the fulfillment of certain obligations arising from any laws or other enactments, or from collective or individual contracts.

#### **7.4.2. Situations when collective work conflicts may occur**

Collective work conflicts may occur when:

- (i) the employer or the employers' association refuses to proceed with the negotiation of collective bargaining contracts, when there is no collective bargaining contract concluded or when the former collective bargaining contract has expired;
- (ii) the employer or employers' association refuses to accept employees' claims;
- (iii) the parties do not reach an agreement on the conclusion of a collective bargaining contract before the date mutually agreed for a finalization of negotiations.

During the validity period of a collective bargaining contract, employees may not start a collective work conflict.

#### **7.4.3. Settlement of collective work conflicts**

Settlement of a collective work conflict requires several steps, some mandatory (notification and conciliation), others optional, applicable based on the parties' agreement (mediation and arbitration).

In all such cases where grounds for the initiation of a conflict of interests may be spotted, the representative trade union or the employees' representatives notifies, in writing, the employer or the employers' association about the situation, indicating the employees' claims together with their arguments, as well as the proposals for settlement of the conflict.

The employer or employers' association is bound to answer in writing to the trade unions or, in lack thereof, to the employees' representatives, within 2 working days from the receipt of notification, by supplying the answers to the claims. If the employer or employers' association fails to answer all notified claims or, if such claims are answered but the trade unions or employees' representatives do not agree with their positions, a conflict of interests can be initiated.

A collective work conflict is initiated after the representative trade union or employees' representatives (in case of collective work conflicts at a company level) notifies the employer on the initiation of such a conflict and notify in writing the territorial labor inspectorate in view of conciliation.

The territorial labor inspectorate will appoint its delegate who participates in the collective work conflict conciliation, and will summon the parties to a conciliation procedure, within a period that cannot exceed 7 working days as of the appointment of the delegate.

If, further to such conciliation, the parties reach an agreement, the collective work conflict will be considered solved.



If the collective work conflict cannot be settled as a result of conciliation, the parties may mutually decide to initiate a mediation procedure.

For the entire duration of a collective work conflict, the parties involved in the conflict may mutually decide for the claims to be subjected to the arbitration of the Office for Mediation and Arbitration of collective work conflicts attached to the Ministry of Labor, Family and Social Protection.

Decisions passed by the Office for Mediation and Arbitration are binding on all parties, complete the collective bargaining contracts and become enforceable as of the decision date.

Mediation or arbitration of a collective work conflict is mandatory if the parties have mutually agreed so, prior to the strike initiation or during the strike.

#### **7.4.4. Strikes**

A strike is any form of a collective and voluntary work cessation within a company, and can only be declared (i) if previously all possibilities to solve a collective work conflict through mandatory procedures provided for by law have been used (ii) following the development of a warning strike and (iii) if the intention to initiate a strike is notified to the employers by the strike organizers at least two working days in advance. A warning strike cannot exceed two hours, if it involves work cessation and in all cases has to precede by 2 working days the respective strike. When, after declaring a strike, more than half of the number of employees who decided to declare a strike waive in writing this decision, the strike ceases. Employees not taking part in a strike continue their activity.

For the entire duration of participation in a strike, the individual labor contract of an employee is suspended *de jure* and during such a suspension period only health insurance rights are maintained.

During a strike, its organizers will continue negotiations with the company's management in order to solve the claims causing the collective work conflict. If the strike organizers and the company's management reach an agreement, the work conflict is considered settled and the strike ceases.

If a company considers a strike illegally declared or held, it may address to the court an application requesting the termination of the strike.

If the court decides that the strike should cease due to a breach of law, upon the interested persons' request, the organizers of the illegal strike and the participating employees may be bound to pay damages.

Preventing or compelling, through threats or violence, an employee or a group of employees, to participate in a strike or to work during a strike represents a criminal offence and is sanctioned by imprisonment or a fine.

## **8. Settlement of labor conflicts and litigation**

### **8.1. Panel of judges**

Law No. 304/2004 on the organization of courts, provides that, based on the Minister of Justice's decision, specialized sections or panels of judges are established within the court, meant to settle labor conflicts and litigation.

Such cases will be heard based on an urgent procedure, by a panel of one judge, assisted by two judiciary assistants (for judgment on the merits) and by a panel of two judges (for judgment in appeal). The judiciary

assistants participate in the debate, having a consultative vote, and their separate opinions are motivated and recorded in the judgment.

## **8.2. Procedural rules derogating from the common law**

Any labor conflicts will be settled based on procedural norms derogating from common law procedures, meaning that they:

- (i) will be subject to trial as emergency cases;
- (ii) have hearing terms which cannot exceed 15 days;
- (iii) the legal summoning term can be a minimum of 24 hours before the hearing term;
- (iv) the burden of proof is incumbent on the employer;
- (v) territorial competence belongs to the Tribunal court with jurisdiction in the area of the claimant's residence/domicile/headquarters;
- (vi) the first instance's judgment is subject to second appeal only.

Law No. 62/2011 contains certain special provisions for individual labor conflicts, such as:

- (i) hearing terms cannot exceed 10 days;
- (ii) the legal summoning term is of at least 5 days before the hearing term;
- (iii) territorial competence belongs to the Tribunal court with jurisdiction in the area of the claimant's domicile or workplace.

## **9. Social security**

The Romanian social security regime is grounded on the incorporation of common social security funds which, as a matter of principle, are state budget funds, save for certain funds established and organized based on certain special laws for certain professional categories, such as lawyers or farmers.

### **9.1. Contributions to the public pension system and other social security funds**

Social security contribution rates are differentiated depending on work conditions (*i.e.* normal, hard or special).

According to the Fiscal Code, social security contribution rates for the year 2016 are as follows:

- (i) 26.3% for normal working conditions (of which 10.5% is due by the employee and 15.8% by the employer);
- (ii) 31.3% for hard working conditions (of which 10.5% is due by the employee and 20.8% by the employer);
- (iii) 36.3% for special working conditions (of which 10.5% is due by the employee and 25.8% by the employer).

These rates apply to (i) the gross monthly income of the employee, capped at five times the average gross salary used to ground the state social insurance budget, for each place of revenue gain and to (ii) the overall monthly salary fund of the employer, capped to five times the average gross salaries used to ground the state social insurance budget, multiplied by the number of insured individuals in the company.

The employer's contribution includes also a contribution of 5.1% to private pension funds. The average gross salary provided by the state social security budget law for the year 2016 is RON 2,681. The employer is liable for the computation, declaration and payment of the above mentioned contributions to the social security fund.

As for the other categories of insured persons, who are not employees or are not working for a certain employer or for an assimilated person, the contribution is entirely due by the insured and is in proportion to the gross insured income. Also, for certain categories of insured persons who are not qualified as employees, the value of the gross insured income is capped at five times the average gross salary used to ground the state social insurance budget and cannot be less than 35% of the average gross salary.

### **9.2. Contribution to the unemployment security budget**

Contributions to the unemployment fund owed by employers is 0.5%, and applies to the overall monthly salary fund of the employer.

Any employed individual owes a contribution amounting to 0.5% of gross monthly income. The employer is liable for the computation, declaration and payment of the above mentioned contributions.

Any person carrying out a certain activity individually (such as associates, shareholders, free lancers, members of family associations, etc.) can be subject to insurance by means of concluding an unemployment security contract with the Agency for Employment and Professional Training. In such cases, the contribution amounts to 1 % of the declared monthly income, entirely due by the insured.

### **9.3. Contribution to the health social security fund**

The health social security fund is established based on the insured persons' contributions, on the contributions of individual and legal entities which employ salaried personnel, on state budget subsidies, as well as on other sources.

As a general rule, employers are bound to pay a 5.2% health social security contribution, applied to the overall monthly salary fund of the employer.

The monthly contribution of an insured person is established at 5.5 %, applied to gross salary incomes – for employees – or upon taxable incomes – for other categories of insured persons.

### **9.4. Contribution to the National Insurance Fund for Work Accidents and Professional Diseases**

Regulations regarding the set-up of insurance funds for work accidents and professional illnesses, as part of the social security system, are meant to provide social protection against risks involved by the loss or diminishment of one's working capacity, death as a result of a work accident, or professional diseases. This fund is established by means of contributions owed by employers or, as the case may be, persons insured through contracts.

Contributions for work accidents and professional diseases insurance due by employers range between 0.15% and 0.85% of the overall monthly salary fund, to be determined as a function of the specific risks related to the activities performed and other indices.

Contributions for work accidents and professional disease insurance due by non-employed individuals concluding, according to the law, insurance contracts for work accidents and professional diseases, such as associates, shareholders, administrators, individuals carrying out independent activities, etc., is established at a fixed rate of 1% of the insured monthly income.

#### **9.5. Contribution to the Salaries Guarantee Fund**

The Salaries Guarantee Fund was established in order to guarantee the payment of salary receivables resulting from individual labor contracts, and from collective labor contracts concluded by employees with employers, against whom final court judgments were ruled for the opening of an insolvency procedure, and to whom the measure of the removal of administration rights was ruled, in full or in part.

Employers are liable to pay 0.25% of the overall monthly salary fund of the employer to the Salaries Guarantee Fund.

#### **9.6. Contribution to the National Fund for Social Health Insurances**

Under Government Emergency Ordinance No. 158/2005 on leave and indemnities for health social insurances, employers are liable to pay a contribution to the National Fund for Social Health Insurances amounting to 0.85% of the overall monthly salary fund of the employer, capped at 12 minimum gross salaries multiplied by the number of employees covered by this contribution, in order to allow the employees access to indemnities related to medical leaves (e.g. indemnity for work incapacity, for maternity, etc). Currently, the minimum gross salary is RON 1,250 (approx. EUR 276).

During the period the employees benefit from medical leave and health social indemnities, the monthly basis for calculation of the contribution to the state social pension insurance system is an amount representing 35% of the gross medium income provided by the state social security budget law corresponding to the number of the working days out of the medical leave period.

#### **9.7. Sanctions imposed on employers for failing to pay the amounts withheld as contributions to the social security funds**

Any employer failing to pay the amounts withheld from employees as contributions to the public social security system, to the unemployment security budget or to the health security budget, is offending under the law and may be punished with fines.

Moreover, the employer is liable for the payment of interest of 0.02% per day of delay and penalties of 0.01% per day of delay computed on the due liability. Also, starting from 1 January 2016, a non-declaring penalty amounting to 0.08% per day of delay was introduced, applicable to principal tax liabilities not declared or incorrectly declared by an employer and assessed by tax inspectors through a tax assessments decision.

Moreover, there is a risk that beside the interest and penalties mentioned above, fines could also be applied, as follows:

- (i) between RON 4,000 – 6,000 (approx. EUR 884 – 1,326) for obligations not paid below a threshold of RON 50,000 (approx. EUR 11,057);
- (ii) between RON 12,000 – 14,000 (approx. EUR 2,654 – 3,096) for obligations not paid between RON 50,000 – 100,000 (approx. EUR 11,057 – 22,115);
- (iii) between RON 25,000 – 27,000 (approx. EUR 5,528 – 5,971) for obligations not paid above a threshold of 100,000 (approx. EUR 22,115).