

GLOBAL EMPLOYMENT LAW

Bulletin

Winter 2013

ROMANIA

Deadline for issuing a disciplinary sanction decision

The High Court of Cassation and Justice settled the long-running controversy around the calculation of the mandatory 30-day deadline for issuing a disciplinary sanction decision.

The controversy surrounds the wording of article 252(1) of the Labour Code which states that the disciplinary sanction decision has to be issued in writing by the employer 'within 30 calendar days as of the date the employer was informed about the perpetration of the disciplinary infringement, but no later than six months after the date of perpetrating such deed.' Any decision issued after the 30 calendar days period is null and void.

Under the first interpretation, the 30 calendar day period should be calculated as of the date the employer acknowledges the deed had been committed by the employee and which might be construed as a disciplinary infringement. In other words, the disciplinary sanction must be imposed within 30 calendar days of the employer discovering the potential infringement.

Under the second interpretation, the 30 calendar day term should be calculated as of the date the employer finalises the disciplinary investigation procedure and acknowledges that the disciplinary infringement actually took place.

The above controversy was recently resolved by the Romanian High Court of Cassation and Justice. The second appeal in the interest of the law filed by the Ombudsman and the general prosecutor related to the interpretation of the 30 day period for issuing a disciplinary sanction decision under article 252(1) of the Labour Code and, in particular, the date from which this term is to be calculated.

According to the High Court of Cassation and Justice, the 30 calendar day period is to be calculated as of the date the disciplinary investigation's final report is registered in the employer's registry.

In its reasoning, the High Court of Cassation and Justice considered that the 'deed' has the nature of a 'disciplinary infringement' only after completion of the disciplinary investigation. This is because, up until that moment, the employee enjoyed the benefit of the doubt. Therefore, the employer acknowledges the existence of the disciplinary infringement only after the completion of the disciplinary investigation procedure, because the fault of the employee is ascertained in the course of such prior investigation.

Once published in the Official Gazette, the above ruling will be binding on all Romanian courts.

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