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Recent amendments to the Romanian labour legislation have brought important changes to the Romanian Labour Code, including changes to collective bargaining agreements and trade unions. The new reforms were triggered to a certain extent by proposals coming from the business community to bring more flexibility to the labour field. The amendments affect some of the most important parts of the employment relationship, such as collective redundancies, fixed-term employment agreements, working hours, collective bargaining agreements, etc.

MORE FLEXIBILITY IN LABOUR RELATIONS FOLLOWING THE RECENT AMENDMENTS OF THE ROMANIAN LABOUR LEGISLATION

By Ana-Maria Placintescu

Recently, the Romanian labour legislation was significantly changed by Law no. 40/2011 for the amendment and completion of the Labour Code and by Law no. 62/2011 on social dialogue. Law no. 40/2011 has brought important amendments to the Romanian Labour Code beginning April 30, 2011, while Law no. 62/2011 replaced the previous enactments related *inter alia* to collective bargaining agreements and trade unions starting May 13, 2011. The new reforms were triggered to a certain extent by proposals coming from the business community to bring more flexibility to the labour field. The amendments aimed at by Law no. 40/2011 and Law no. 62/2011 affect some of the most important parts of the employment relationship, such as collective redundancies, fixed-term employment agreements, working hours, collective bargaining agreements, etc.

Collective Redundancies

In the event of collective dismissal under the previous regulation, several social criteria under the applicable collective bargaining agreement provided the basis for the selection of employees for dismissal. Under the new amendments, the evaluation of performance objectives has priority in the event of collective dismissals and, thereafter, other criteria shall be applied when establishing the order for dismissal. In this respect, the level of the employees' professional performance shall prevail when initiating the process of collective dismissals.

Also, the restriction period during which the employee dismissed by collective dismissal has the right to be reemployed, with priority, in the workplace with the same prior work activity has been scaled down from 9 months to 45 days.

The Increase of Certain Terms

In order to protect the interests of employees, the Labour Code provides certain mandatory terms, which cannot be increased by the employer, such as the prior notice period in case of resignation and trial work period. Such terms were too short under the previous regulation and did not provide enough time for the employer to find replacements in case of an employee resignation or for properly evaluating an employee's skills within the trial work period.

According to the recent amendments, the prior notice period in case of an employee's resignation has been increased from 15 calendar days to 20 business days (for employees holding execution positions) and from 30 calendar days to 45 business days (for employees holding management positions), thus giving the employer more time to find replacements, and keeping the resigning employee bound to the employment agreement for a longer period of time.

Also, in order to allow the employer to evaluate the actual skills of the employee, the

maximum duration of the probation period was extended from 30 to 90 calendar days for employees holding execution positions and from 90 to 120 calendar days for employees holding management positions.

Agreement of the Parties for Recovering Damages Caused to the Employer

A novelty brought by Law no. 40/2011 is the possibility granted to the parties of an employment agreement to establish and evaluate the damage caused by the employee to the employer and to provide for the recovery of the value of such damages under the agreement. The value of the damages recovered by the agreement of the parties is allowed only in case the amount to be recovered does not exceed the equivalent of 5 minimum national gross salaries (roughly EUR 800).

Delegation Period

The delegation of the employee is largely used by the employer as, in the course of business, the employee may be required to temporarily perform his/her work outside the workplace. However, under the previous regulation, the period within which the employer could order the delegation of an employee was limited to 60 days with the possibility to extend such period by another 60 days. Such periods were applicable for the entire duration of the employment agreement.

According to recent amendments under the Labour Code, the delegation of an employee may be ordered for 60 calendar days over a period of 12 months and such period may be extended for successive periods of a maximum 60 calendar days with the employee's consent.

Fixed-Term Employment Agreements

Under the previous regulation, the employment agreement for a fixed period could be concluded only for a maximum term of 24 months; however, such contracts could only be prolonged two times without exceeding the above mentioned term. Such restrictions forced employers who needed fixed employees to accomplish or complete various projects to seek an alternate solution in case the project was to be extended for more than 24 months.

In order to adjust the circumstances of the business to the employment regulations, the period for which fixed-term employment agreements may be concluded has been extended to 36 months. Moreover, according to the new amendments, fixed term-employment agreements may be prolonged for the period necessary to accomplish or complete a project, program or work.

The Labour Code provides that, between the same parties, no more than 3 fixed-term employment agreements may be successively concluded. In contrast with the previous regulation, the new Labour Code cancelled the prohibition that such contracts be concluded only within the term of 36 months. The conclusion of successive employment agreements may now be performed beyond the 36 months term. However, the cumulated duration of such successive contracts cannot exceed a maximum of 5 years.

Working Hours

According to the Labour Code, the maximum working hours can be exceeded provided that the average working hours for a reference period does not exceed 48 hours/week (including overtime). The reference period for computing the average working hours was increased from 3 to 4 months, with the possibility of negotiating a reference period of up to 6 months through the collective bargaining agreement. Moreover, subject to compliance with the regulations regarding the health and security protection of the employees at work, a more flexible working time may, based on objective and technical grounds or for work organization reasons, be set up through the collective bargaining agreement by increasing the reference period up to a maximum of 12 months.

Reducing Work Days

The recent amendments to the Labour code introduced the employer's right to unilaterally decide in certain circumstances to decrease the employee's work schedule and salary. Specifically, in case of a temporary reduction in the work activity for economic, technologic, structural or similar reasons for periods exceeding 30 working days, the employer has the possibility to reduce the work schedule from 5 days to 4 days per week, with a corresponding decrease in salary, until the situation causing the reduction in the work schedule has been corrected or remediated.

Applicability of Collective Bargaining Agreements

According to the previous regulation, the collective bargaining agreement could be concluded at a national level and its provisions were applicable to all employers and employees. Law no. 62/2011 removed such national collective bargaining agreement and, for the time being, collective bargaining agreements can be concluded at the activity level, group of companies' level and employer level.

Under the previous regulations, there were inconsistent provisions regarding the applicability of the collective bargaining agreement concluded at the industry level and, therefore, it was debatable if such agreement applied to all employers within the relevant industry or only to employers nominated within an annex to the collective bargaining agreement. According to the new Law no. 62/2011, the collective bargaining agreements concluded at the activity level are applicable to all employees of the units which are in the activity sector for which the collective agreement was concluded and units which are part of the employers' association executing the agreement.

Inconsistencies of Recent Amendments

As in many other cases, the improvements brought to the labour relationship field came together with unclear provisions, which leave room for interpretation, and with several inconsistent provisions, which will likely raise difficulties for employers and lead to contradictory decisions of the courts of law.

One of the most significant legislative inconsistencies relates to the term for challenging the decision for disciplinary dismissal. Pursuant to the Labour Code, the term for challenging a dismissal decision in court is 30 calendar days. On the other hand, Law no. 62/2011 on social dialogue (which entered into force after Law no. 40/2011) provides a term of 45 calendar days. The differing provisions would likely result in the term of 45 days being the applicable term considering that Law no. 62/2011 regulates labour conflicts and such law is subsequent to the Labour Code.

However, such reasoning could be challenged in the case of a dismissal for disciplinary reasons. The Labour Code distinctly regulates disciplinary liability and expressly provides that, in case of dismissal for disciplinary reasons, the dismissal decision may be challenged within 30 calendar days as of the communication date. Thus, one may argue that the 30 day term is applicable in cases challenging the disciplinary dismissal, as it is expressly established through special provisions pertaining to disciplinary liability.

Leaving aside such pro and con arguments, it is obvious that, in future trials, the employer and employee will invoke the arguments most favourable to them, depending on their specific situations, and that the unclear and inconsistent provisions in the labour legislation will lead to contradictory court decisions and non-unitary labour practices as regards the terms for disciplinary dismissal decisions.