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Recent changes to the Labour Code.**Tougher rules aimed to tackle undeclared work**

By amending the Labour Code in August 2017, via the Emergency Ordinance no. 53/2017, the Government toughened the rules on conclusion and declaration of employment contracts and facilitated the authorities' control activities in the sensitive area of undeclared work.

Some of the main changes introduced by EGO no. 53/2017 are related to the registration of employment contracts, to the prohibition of rendering work/accepting work in the absence of a written employment contract and to the employer's obligation to officially record the daily duration of each employee's presence in the work place, including entry and exit hours.

We will set out below the most noteworthy legal amendments – which are either striking by their severity or able to generate organizational changes for major employers.

I. New rules regarding the conclusion and declaration of employment contracts

EGO no. 53/2017 introduces a new approach on the subject of registration/declaration of employment contracts.

The Government decided to eliminate criminal liability for employers which do not use written employment contracts and do not declare the respective work to the labour authorities, replacing it with administrative liability.

Thus, starting with August 2017, any employer who uses undeclared work is liable to pay a fine of 20,000 RON (approx. 4,400 EUR) per each undeclared employee.

In addition, the labour authorities have been granted the **possibility to suspend the activity of any employer** which is found liable in this regard.

To be noted that such prerogative may apparently be exercised even if the breach regards a single employee and irrespective of whether or not the failure to declare the respective employment is due to an omission or simply to a delay in observing the applicable legal deadline.

EGO no. 53/2017 indicates that the decision on the suspension of activity would have to observe a specific procedure, to be adopted by the Ministry of Labour at a later date, after consultations with the nationwide trade unions and employers' confederations.

II. Obligation to keep detailed daily timesheets for all employees

As part of the same legislative approach oriented towards the tightening of rules to combat undeclared work, starting with August 2017 **all employers are required to timely and accurately record the employees' working time - including daily entry and exit hours.**

Such daily timesheets (in Romanian: *pontaje*) must be available at any time for inspection by the labour authorities.

To be noted, for clarification purposes, that the timesheets are the documents which serve as basis for the monthly payrolls (in Romanian: *state de salarii*), being thus part of the same category of official company/accounting records as the payrolls.

RECOMMENDATIONS

Considering the tightening of legal rules such as briefly described above and the severe legal consequences that may occur in case of breach thereof, we recommend that the companies pay special attention to the following practical matters:

- Ensure that (i) all new hires are done based on written employment agreements and that (ii) such agreements are reported/declared in the electronic registry of employees (REVISAL) at the latest one working day prior to the commencement of the activity
 - ✓ The failure to comply with these obligations may trigger sanctions consisting in the payment of fines of 40,000 RON (approx. 8,400 EUR) per each case of breach.
- Companies which use access card systems to control the entrance into their premises should ensure that the daily timesheets take into account the logs thereof.

We recommend that such companies implement internal rules whereby all managers perform periodic checks of the respective automatic logs and, where the case, they discuss/check with the employees the reasons for situations such as: unauthorized leaves, extended

presence on the premises (*i.e.*, checking whether the employees were working overtime – knowing that, if the case, this should be reflected accordingly in the official timesheets and paid via the payrolls) in order to ensure that the timesheets actually reflect the employees' activity and further substantiate accurate payroll calculations.

- ✓ The failure to record the employees' daily working time may trigger the employer sanctioning with a fine of 1,500 – 3,000 RON (approx. 330 EUR – 660 EUR).
- ✓ More importantly, the wilful drawing-up of monthly timesheets (*pontaje*) that do not match the employees'

actual working time with a view to avoid the recognition and payment of increased salary rights such as add-ons that may be due for overtime work may, under certain circumstances, trigger the employer's and its legal representatives' criminal liability for criminal offenses associated primarily with tax evasion – for which the company may be sentenced to pay criminal fines and respectively the legal representative may be sanctioned to several year imprisonment.

This document is intended for informational purposes only, does not represent legal advice and does not focus on particular cases.

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