



Legal Updates in Labour Law

(special legislation – COVID-19 pandemic)



COVID-19 PANDEMIC

12 AUGUST 2020

We are setting out below the legal updates brought by the enactment of Emergency Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of coronavirus SARS-COV-2, in force as of 10.08.2020 (“**GEO 132/2020**”).

I Possibility to temporary reduce the activity determined by the state of emergency/alert/siege

As a response to the proposals sent by the representatives of the business environment in Romania, after consultation of social partners, the Government has implemented a mechanism meant to encourage the gradual return into activity for the companies affected by COVID-19 pandemic, following *kurzarbeit* model used throughout the European Union.

In its adaptation of this model to the Romanian law, GEO 132/2020 regulates an exception from the provisions of art. 112 para. 1 of Law 53/2003 (Labour Code)¹, stipulating that **employers have the possibility to reduce by up to 50% the working schedule provided in the individual labour agreement for full-time employees²** under the following conditions:

¹ Art. 112 para. (1) of the Labour Code: “For full time employees the normal work schedule duration is 8 hours per day and 40 hours per week”.

² Assuming a labour agreement with a duration of 8 hours/day, the employer could reduce the work schedule to a maximum of 4 hours/day.

- a) there is a temporary reduction of activity caused by the state of emergency/alert/siege, only if the below conditions are met simultaneously:
 - (i) it affects at least 10% of the number of employees;
 - (ii) it is justified by a decrease in turnover (*from the month preceding the measure application or at most from the month preceding it*) by at least 10% compared to the same month of the previous year;
- b) trade union/employees' representatives/employees are informed and consulted in advance;
- c) the reduced work schedule is established by the employer monthly by unilateral decision for a period of at least 5 consecutive working days of each month;
- d) the decision is communicated to the employee at least 5 days before the effective application of the measure and is recorded in the general registry of employees no later than the day prior to its occurrence.

NB: The possibility to reduce the work schedule also applies in the case of shift work as well as unequal work schedule.

The employment or performance of any other type of work, including teleworking/work from home, of one or several employees, outside the work schedule established by the employer under GEO 132/2020, represents an administrative breach sanctioned with a fine of RON 20,000 for each person thus identified, without exceeding the cumulative value of RON 200,000³.

II Rights and obligations of the employer and employees during the temporary reduction of activity determined by GEO 132/2020

A) Employees' rights and obligations

- employees benefit from all the rights and obligations provided in the individual labour agreement or in the collective labour agreement, pro rata to the actual time worked;
- during the reduction of work schedule, **employees receive an allowance of 75% calculated to the difference between the gross basic salary provided in the individual labour agreement and the gross basic salary of the working hours actually worked as a result of the reduction of the work schedule.** This allowance is granted in addition to the due salary rights calculated by reference to the work time effectively worked. The allowance will be borne by the employer and will be paid on the salary payment date, being settled from the unemployment insurance budget.

NB: the settlement procedure and the period of application of this measure will be established by Government Decision within a maximum of 30 days from the date of entry into force of GEO 132/2020;

- employees cannot perform overtime;
- granting of bonuses as well as any other add-ons to the basic salary of the management can be made only after the end date of the temporary reduction of activity established under GEO 132/2020.

³ Section of GEO 132/2020 where these administrative breaches are incriminated will enter into force as of the publication date of the normative act in the Romanian Official Gazette, Part I (respectively on 10.09.2020).

The above-mentioned allowance is not cumulated for the same employee with (i) the financial support detailed in section IV below nor with (ii) the financial support measures granted according to art. I and II of GEO 92/2020 for the establishment of active support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus, as well as for amending normative acts nor with measures to stimulate employers financed from the unemployment insurance budget provided by Law no. 76/2002, as subsequently amended and completed.

B) Employers' rights and obligations

- the employer cannot employ personnel/subcontract activities for the performance of activities identical or similar to those performed by employees whose work schedule has been reduced;
- the employer cannot cumulatively apply the measure to reduce the work schedule provided by GEO 132/2020 with the reduction of the work schedule established under art. 52 para. 3 of the Labour Code;
- the employer cannot initiate collective redundancies during the temporary reduction of activity under GEO 132/2020;

III Financial support granted to the work beneficiaries conducting activities performed by day labourers

The beneficiary of works that carry out unqualified activities in one of the fields provided by art. 13 of Law 52/2011 on the exercise of occasional activities carried out by day labourers and whose activity was interrupted or restricted for a period of 3 months, as a result of SARS-COV2 coronavirus, may benefit from the state budget of an amount equal to 35% calculated to the remuneration paid to day labourers.

The amount will be granted by the beneficiary of works, from its own budget at the time of payment and will be settled, upon request, from the state budget for the persons for whom it was paid.

The request for settlement⁴ as well as the lists of day labourers will be submitted monthly for the previous month, until the 5th of each month, by the beneficiaries of works at the payment agencies and county social inspection in which they carry out their activity/have their registered office. If the request is submitted on a later date, the amount will be settled the following month.

IV Support measures for employers who conclude individual labour agreements for determined periods of up to 3 months

Employers who conclude individual labour agreements for a determined period of up to 3 months, until December 31st, 2020, will be able to benefit from the settlement⁵ of a part of the salary granted to these categories of employees. The amount that can be reimbursed from the National Employment Agency ("ANOFM") will be equal to 41.5% of the salary for the days worked in these jobs, for a work schedule of 8 hours/day, but no more than 41.5% of the average gross salary gain stipulated by the Law on the state social insurance budget for 2020 (i.e. RON 2.253).

⁴ The settlement shall be made based on a procedure to be approved by Government Decision in 30 days at the most as of the entry into force of GEO 132/2020.

⁵ The settlement shall be made in 10 days at the most as of the submission of the request, based on a procedure to be approved by Government Decision in 30 days as of the entry into force of GEO 132/2020.

The employer will have to pay in full to the employee the value of the work performed under the individual labour agreement; the settlement will be made later on the basis of: (i) a sworn statement showing the fulfilment of conditions and (ii) list of persons for which settlement is requested.

V Support measures for employers whose employees have conducted their activity via teleworking during the state of emergency

Employers whose employees have conducted their activity via teleworking during the state of emergency for at least 15 working days may benefit from a financial support of RON 2,500 for each teleworker in order to purchase packages of technological goods and services necessary for teleworking.

Financial support shall be granted, in the order of submission of applications, until December 31, 2020, from the unemployment insurance budget, within the limits of the funds allocated for this purpose.

The method of granting and the categories of goods that can be purchased will be established by Order of the Ministry of Labour and Social Protection, which will be published in the Official Gazette within 10 days from the publication of GEO 132/2020, respectively until 20.08.2020.

Additionally, within 30 days from the granting of the financial support, the employers have to send to ANOFM (National Employment Agency) justifying documents attesting the acquisition of the goods (to be established by Order of the Ministry of Labour and Social Protection), under the sanction of full refund of the granted amount.