

# Review

A regular update on developments

ALLEN & OVERY

RTPR

## Legal Update

August 2017

### SPEED READ

Key amendments brought to the Romanian Labour Code on 7 August 2017:

- ✓ **The concept of undeclared labour is specifically defined and new sanctions are introduced** in an attempt to reduce the phenomenon of undeclared labour;
- ✓ **New rules on amending employment agreements:** any amendments made to the employment agreement must be reflected in an addendum concluded before the changes take place;
- ✓ **Stricter records of the employees working time:** the employer will have to keep track of the time when the employees start and finish work;
- ✓ **No more criminal liability:** hiring more than five employees without a valid employment agreement is no longer a criminal offence;
- ✓ **Reduced fines in case of early payment:** the employer can pay only half of the administrative fine if the payment is made within 48 hours from the date of the fine; and
- ✓ **A new complementary sanction has been introduced:** in certain cases of undeclared labour, the labour inspectors will also suspend the activity of the work place until the fine is paid and the breach is remedied.

### Recent amendments to the Romanian Labour Code

The main piece of legislation on employment in Romania (Law No. 53/2003 – the **Romanian Labour Code**) has been recently amended by way of a government ordinance which came into force on 7 August 2017.

This paper provides a brief overview of the most notable changes to the employment legislation as well as the implications of these changes on the day to day activity of businesses.

### 1. THE CONCEPT OF UNDECLARED LABOUR. CHANGES TO ADMINISTRATIVE OFFENCES AND CRIMINAL LIABILITY.

The concept of “undeclared labour” (*muncă nedecarată* in Romanian) has been explicitly defined in an attempt to reduce the phenomenon of undeclared labour. The concept includes the following circumstances:

- hiring a person without concluding an employment agreement (in written form) the day before employment commences;
- hiring a person without registering the employment relationship in the general registry of employees no later than the day before employment commences;
- allowing an employee to work while his/her employment agreement is suspended; and
- allowing a part-time employee to work outside his/her normal working time.

In order to be able to prove that the legal requirements regarding undeclared labour are observed, the employer must also keep at the workplace a copy of each employment agreement concluded with an employee working at that workplace. Failure to observe this legal requirement can trigger administrative fines of RON 10,000 (approximately EUR 2,190).

The new piece of legislation also includes changes with respect to the potential sanctions which can be applied in case of undeclared labour, as follows:

- hiring more than five employees without concluding an employment agreement is no longer a criminal offence; and
- each case of undeclared labour is sanctioned with an administrative fine of RON 20,000 (approximately EUR 4,385) except for allowing a part-time employee to work outside his/her normal working time for which an administrative fine of RON 10,000 (approximately EUR 2,190) can be applied.

In almost all cases of undeclared labour (the exception being the case in which the employer allows a part-time employee to work outside his/her normal working time), apart from the administrative fines, the labour inspectors will also suspend the activity performed at the workplace until the fine is paid and the breach is remedied.

The exact procedure for suspending the activity performed at the workplace has not been approved at the date of these changes and will be issued after consultation with the trade unions and business owners confederations which are representative at a national level. It is therefore debatable whether this additional sanction can be applied by labour inspectors until the exact procedure is approved.

## 2. NEW RULES ON AMENDING EMPLOYMENT AGREEMENTS

Following the recent amendments made to the Romanian Labour Code, any changes made to the employment agreement must be documented in an addendum to the agreement which needs to be concluded before the amendments become effective. Previously, this amendment had to be concluded within 20 business days from the date of the change. The parties do not have to document the change in an addendum to

the employment agreement if the amendment is provided by law or by the collective labour agreement.

## 3. STRICTER RECORDS ON THE WORKING TIME OF THE EMPLOYEES

Apart from the employer's general obligation to keep record of the working hours of the employees, the law now specifically requires that the employer keeps track of the time when the employees start and finish work. If requested, this information must be provided to the labour inspectors.

## 4. REDUCED FINES IN CASE OF EARLY PAYMENT

In order to incentivise employers to pay the administrative fines applied by the labour inspectors, the new piece of legislation provides the possibility for employers to pay only half of the fine provided that the payment is made within 48 hours from the date the fine is applied.

### KEY CONTACT

*If you would like to discuss the issues raised in this paper in more detail, please contact any of the below named individuals or your usual RTPR Allen & Overy contact.*



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