

New obligations and sanctions for employers

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On 7th August 2017, an important change in the Romanian Labour Code came into force. Among other things, these changes impose new obligations for employers regarding employment contracts, time entry systems and safekeeping of contracts.

The purpose of the new rule, EO 53*, is not only to improve employment practice, but is primarily to combat undeclared employment. The rule establishes a new definition of undeclared employment and stipulates significant fines for breaches.

New obligations for employers

According to EO 53 the employer must now:

- make any amendment to an employment contract **before** any changes come into effect, unless the change is expressly specified by law or within the company's bargaining agreement. Previously, such an amendment had to be added to the contract within 20 working days after making the change.
- record daily time overviews for each employee's start and end of work. Previously there had been just a general obligation of the employer regarding the time recording of employees included in the Labour Code.
- keep the employee's employment contact at the employee's place of work and not only at the registered office of the company.

Written form of the employment contract

EO 53 repeals the legal provision which stated that a written contract is required for effectiveness of the contract. This facilitates the proof of an existing work relationship. Now, as you can read in the next paragraphs, any work without a written contract is considered undeclared employment.

Undeclared employment – New definition

EO 53 extends the definition of undeclared employment. As of now, work is considered undeclared if you employ a person under the following circumstances:

- without signing a written contract at least one day before the work starts;
- without registering the employment relationship in the work register and the transmission of the employee register (Ro: *Revisal*) to the labour authority at least one day before the work begins;
- during the period, the employment contract of that person is suspended;
- outside agreed working hours in a part-time employment contract.

The consequences of a breach of duty by the employer leads to significant fines, ranging from 10,000 RON (approx. €2,200) per person for working outside agreed hours in a part-

time contract, and 20,000 RON (approx. €4,400) per person for the other offences mentioned above. (The fine is reduced by 50% if the fine is paid within 48 hours).

It is worth emphasising that, according to EO 53, labour authorities can – on top of any fines – insist that work is terminated at the workplace under investigation. (For that reason, there will be a special procedure put in place and published in the Official Journal.) Work will be allowed to resume only after all fines have been paid and all detected discrepancies have been resolved.

Also, worth mentioning is the fact that EO 53 abolishes the criminal offence of employment of more than 5 persons without a work contract in place. The purpose of this provision was considered legitimate, but the legal consequences were thought too rigorous. In reality, legal objectives were not achieved as the law enforcement agencies and courts tended to stop proceedings for lack of social threat (RO: *pericolul social*).

Conclusion

Most of the changes brought by EO 53 are welcome. They could lead to a significant decrease in undeclared employment, not least due to the more severe penalties. Extending the offence of undeclared work to more common practices (e.g. employing part-time workers outside agreed working hours) enables adequate penalties to be imposed, and is therefore a useful tool to combat undeclared work practices.

On the other hand, the newly introduced obligations a) for the employer to record daily time overviews and b) to amend contracts before changes take place, could cause problems.

EO 53 came into force on 7th August 2017. Employers have to adjust immediately to the new legal obligations. For employers with many employees, this could mean considerable effort if they are to avoid fines.

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* EO 53: Emergency Ordinance No. 53/2017, published in the Official Journal No. 644