EMPLOYMENT & PENSIONS

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Law no. 130/1999 on certain protection measures for employed persons, published in the Official Gazette no. 355/27th of July 1999
- Government Decision no. 1105/2002 for the establishment of the national minimum gross basic wage published in the Official Gazette no. 752/15th of October 2002
- Law no. 130/1996 on collective labor contract, republished in the Official Gazette no. 184/19th of May 1998
- Labor Code from the 24th of January 2003 (Law no. 53 from the 24th of January 2003), published in the Official Gazette no. 72/5th of February 2003
- Government Decision no. 247/2003 on drawing up and filing of employees general book, published in the Official Gazette no. 164/14th of March 2003

I. Individual employment contract

Employment contract is defined by Art.10 Labor Code as being: "the contract on the basis of which a natural person, referred to as employee, undertakes to perform the work for and under the authority of an employer, natural or legal person, in exchange for remuneration referred to as wage".

Individual employment contract is concluded on the basis of the parties' consent, in writing, in Romanian language.

The employer is obliged to inform within 15 days from the launching of the offer to conclude or change the individual employment contract, the person requesting the employment or, as the case may be, the employee regarding the general clauses that he intends to write in the individual employment contract or to change. Otherwise, the employee has the right to

inform, within 30 days, the competent court of law and to claim damages according to the prejudice suffered as a result of the employer's failure to execute the informing obligation.

Probation period

During the execution of an individual employment contract only one probation period may be established that shall not exceed 30 calendar days for executive positions and 90 calendar days for management positions. Probation period is considered length of service.

II. Insertion of special clauses in the individual employment contract

The new Labor Code has regulated the possibility to include in the individual employment contract **special clauses** which, if not observed, may engage the forcing of the guilty party to pay damages. These clauses are optional and at the employee-employer agreement discretion.

a) Non-competition clause

The non-competition clause is regulated both during the execution of the individual employment contract and after its termination.

- **Effects of the insertion of the non-competition clause in the individual employment contract**

For the employee

- he cannot perform, for his own or a third party's benefit, an activity in competition to the one performed for his employer or cannot perform an activity for a third party's benefit who is in relation of competition with his employer;
- should the non-competition clause be broken, he may be forced to restitute the payment and, as the case may be, to damages according to the prejudice caused to the employer.

The individual employment contract has to stipulate concretely the activities forbidden to the employee during the validity of the contract.

For the employer

- to pay to the employee a monthly compensation that is negotiated and is of at least 25% from the salary. The compensation has to be paid as such and in due time.

➢ **Cessation of the effects of the non-competition clause**

The non-competition clause is limited in time. In principle, the non-competition clause ceases to produce its effects from the date of the termination of the individual employment contract, subject to exceptions stipulated by the Labor Code.

b) Mobility clause

Mobility clause may be inserted in the individual employment contract when the activity that is going to be performed by the employee does not imply a standing place of employment. In this case, the employer benefits from additional performances in cash or in kind.

c) Confidentiality clause

Through the confidentiality clause the parties agree, for the entire duration of the individual employment contract and after its termination, not to pass data or information acknowledged during the execution of the contract, subject to conditions established by internal regulations, by collective labor contracts or by individual employment contracts.

III. Employees general book

The employees record is kept by employers with the help of employees general books. Each employer has the obligation to establish an employees general book, within 10 working days from the beginning of activity.

The methodology for the drawing up of the employees general book has been established through the Government Decision no. 247/203 on drawing up and filing of the employees general book.

IV. Regulations on employment

The new Code of Labor has brought new regulations regarding employment. Thus, new types of employment contracts, not known by the previous regulation are introduced, for example:

A. Employment contract with definite period

The cases in which individual employment contracts with definite period may be concluded are stipulated in the Art. 81 Labor Code.

The period for which such a contract may be concluded cannot exceed 18 months. The employment contract with definite period may be extended only with the written agreement of the parties expressed inside the initial term of 18 months and two times consecutively at the most.

B. Temporary employment contract

This contract may be concluded between a temporary employee and a temporary work agent (trade company authorized by Ministry of Labor) for the performing of precise tasks, named temporary work missions. The work is performed in the favor of an user, who concludes for this purpose a contract of making available with the temporary work agent.

The temporary work mission is established for a term that cannot exceed 12 months. The duration of the temporary work mission may be extended once for the period that, added to the initial duration of the mission, cannot lead to the exceeding of a period of 18 months.

The user resorts to temporary work agents in the following situations:

a) for the replacement of an employee whose individual employment contract is suspended, during the suspension;
b) for the performance of seasonal activities;
c) for the performance of certain specialized or occasional activities.

C. Part-time employment contract

Part-time employment contract is concluded only in writing, for definite or indefinite period. The working hours of the employee having part-time employment contract has to be of at least 2 hours a day.

The salary rights are granted proportional to the time worked actually, with reference to the rights established for the normal working hours.

D. Homeworking contract

The employees fulfilling, at their domicile, the duties specific to the position they held, are considered homeworking employees. The homeworking employees establish the working program by themselves. The employer has the right to verify the homeworking employee's activity, according to the conditions established by the individual employment contract.

E. Apprenticeship contract

The contract of apprenticeship at the place of employment is the individual employment contract of particular type, on the grounds of which the employer, authorized by the Ministry of Labor and Social Solidarity, undertakes to participate in the vocational training courses and to work under the respective employer's subordination.

V. Modification, suspension, termination of the individual employment contract

1. Modification of the individual employment contract

The individual employment contract may only be modified with the parties' agreement. The unilateral modification of the individual employment contract is only possible in the cases and subject to conditions stipulated by the Labor Code.

Modification of the individual employment contract refers to any of the following elements: duration of the contract, place of work, type of work, working conditions, salary, working time and resting time.

2. Suspension of the individual employment contract

The suspension of the individual employment contract involves the temporary cessation of the producing of the effects of the individual employment contract. The suspension of the individual employment contract may occur de jure, by parties' agreement or by the unilateral act of one of the parties.

3. Termination of the individual employment contract

The individual employment contract may terminate as follows:

a) de jure;
b) as a result of the parties' agreement, on the date agreed by them;
c) as a result of the unilateral will of one of the parties, in the cases and conditions restrictively stipulated by law.

The individual employment contract is terminated from the employer's initiative by dismissal. The dismissal may be ordered for reasons in keeping with the employee's person or for reasons not connected with the employee's person. The dismissal of the employees is forbidden:

- for reasons of sex, sexual orientation, genetic characteristics, age, national affiliation, race, color, ethnic, religion, political choice, social origin, handicap, family situation or responsibility, union affiliation or activity;

- for the exercising, according to law, of the right to strike and of the union rights.

3.1 Dismissal for reasons connected with the employee's person

The cases in which the employer may order dismissal for reasons connected with the employee's person are stipulated in the Art. 61 Labor Code. For example:

i) for employee's serious misconduct or repeated misconducts from the rules of labor discipline or from those established by the individual employment contract, collective labor agreement applicable or internal regulation, as disciplinary sanction;

ii) if the employee does not correspond professionally to the place of employment in which he is employed.

3.2 Dismissal for reasons not connected with the employee's person

Dismissal for reasons not connected with the employee's person is determined by the liquidation of the place of employment taken by the employee as a result of the economic difficulties, of the technological transformations or the reorganization of activity.

Liquidation of the place of employment has to be effective and to have a real and valid cause. In case of dismissal for economic reasons, the employer is obliged to draw up a social measures plan, to propose to the employee vocational training programs and a minimum 15 working days notice.

Dismissal for reasons not connected to the employee's personality may be individual or collective.

The employer who has ordered mass dismissals *cannot make new employments* for the places of employment of the dismissed employees for a period of 12 months from the date of their dismissal. Otherwise, the dismissed employees have the right to be re-employed on the same places of employment taken previously, without any exam or contest or probation period.

If the employees having the right to be re-employed do no not request such a thing, the employer is allowed to make new employments for the vacant places of employment.

VI. Working time and resting time

1. Working time

For the full time employees, the normal working time is of 8 hours a day and 40 hours a week. The maximum legal duration of the working time cannot exceed 48 hours a week, including overtimes.

It is possible for the employee to be obliged to perform overtimes only if cases of force majeure appear or if these are necessary for urgent works destined to prevention of occurrence of accidents or removal of the consequences of an accident.

The overtime increase in wage cannot be smaller than 75% from the basic salary.

2. Legal holidays

Non-working legal holidays are: 1st and 2nd of January; the first and the second day of Easter; 1st of May; 1st of December; the first and the second day of Christmas; two days for each of the annual religious holidays, thus declared by the legal religious cults, others than the Christians, for persons belonging to those ones.

Other days off may be established by the collective labor contract.

3. Vacations

According to the legal regulations in force, all the employees have the right to annual vacation with pay, whose minimum duration is of 20 working days. Usually, the vacation is performed in kind.

In order to settle certain personal situations, the employees have the right to *vacations without pay*. The duration of the vacation without pay is established by the collective labor contract applicable or by the internal regulation.

The employees have the right to benefit from, on request, *vacations for vocational training.* Vocational training vacations may be granted with or without pay.

VII. Salary

Salaries are established by individual and/or collective bargaining between employer and employees or their representatives.

The employer may negotiate and establish basic salaries by the individual employment contract under the basic gross salary for one hour at national level, established by government decision.

From the 1st of January 2003 the basic gross salary at national level is of lei 2,500,000 monthly for a full time average working program of 170 hours a month. The deductions from salary cannot be operated, except the cases and conditions provided by law. Cumulated, they cannot exceed each month half of the net salary.

VIII. Collective labor contracts

Collective labor contracts may be concluded at the level of the employers or at the level of groups of employers, of the braches of activity and at national level.

Collective bargaining is compulsory, except the case in which the employer has less than 21 employees. The initiative of negotiation belongs to the employer. If the employer does not initiate the negotiation, it shall take place at the request of the union organization or of the employees' representatives, as the case may be, within 15 days from the lodging of the application. The duration of the collective bargaining cannot exceed 60 days.

Collective bargaining shall have as object, at least: the salaries, duration of the working time, working program and working conditions.

IX. Internal regulation

According to the Labor Code, the employers have the obligation of, within 60 days from the date of the obtaining of the legal personality, drawing up the internal regulation, with the consulting of the union or of the employees' representatives, as the case may be. The provisions to be included in the internal regulations are stipulated by Art. 258 Labor Code.

X. Patrimonial liability

The patrimonial liability is grounded on the norms and principles of civil contractual liability. Thus, the employer is obliged to compensate the employee if this one has suffered a material damage from the employer's fault, during the fulfillment of his duties of the job or in connection thereon. In case of employer's refusal, the employee may file a complaint to the competent courts of law. In his turn, the employee has patrimonial liability

for material damages to employer from his fault and in connection to his work.

XI. Disciplinary liability

The employer is entitled to apply disciplinary measures to his employees every time he establishes a disciplinary deviation belonging to them. The sanctions, except the written notice, shall be enforced after the performing of the disciplinary investigation.

Disciplinary sanctions that may be enforced by the employer are stipulated by Art. 264 Labor Code. These shall be enforced by a ***decision*** issued in writing, within 30 calendar days from the date of the acknowledgment about the disciplinary deviation, but with 6 months from the date of the performing of the deviation at the latest.

If, by professional regulations approved by special law, another sanctioning regime is established, it shall be the one to be enforced.

Only one sanction can be enforced for the same disciplinary deviation.

XII. Sanctioning regime

Labor Code comprises two chapters for the sanctioning regime applicable to employers that do not comply with the obligations established in their burden by law.

Thus, chapter IV of the Title XI of the Labor Code regulates contravention liability and chapter V of the same Title regulates criminal liability.

In the case of the committing of a contravention the applicable sanction is in all cases the fine, its quantum varying between lei 3,000,000 and lei 200,000,000, according to the seriousness of the act.

Establishment of contraventions and enforcement of sanctions are performed by labor inspectors.

Offences stipulated by the new Labor Code are the following:

i) failure to execute a final judgment on salary payment within 15 days from the date of the execution application presented to the employer by the interested party; the punishment is imprisonment from 3 to 6 months or a fine;
ii) failure to execute a final judgment on reintegration in work of an employee; punishment is imprisonment from 6 months to 1 year or a fine;

In these two cases the criminal action begins at the injured person's complaint and the parties' reconciliation cancels the criminal liability;

iii) failure to file by the employer, within 15 days, in the established accounts, of the amounts cashed from the employees as contribution due to public social insurances system, to the budget of the unemployment insurances or to the health social securities insurances budget; punishment is imprisonment from 3 to 6 months or a fine.