

Client Brief

EMPLOYMENT LAW | ROMANIA

JANUARY 2015

AMENDMENTS TO ROMANIAN LABOUR CODE

The Romanian Parliament has recently passed Law no. 12/2015 for the modification and supplementation of Law no. 53/2003 - the Romanian Labour Code ("**Law 12/2015**"). Law 12/2015 was published in the Romanian Official Gazette, Section 1, No. 52/22.01.2015 and will enter into force on January 25, 2015.

1. Legal Background

The main purpose of Law 12/2015 was to continue the transposition into the national legislation of the Directive no. 2008/104/EC of the European Parliament and of the Council, on the temporary agency work and of the Directive 2003/88/EC of the European Parliament and of the Council, concerning certain aspects related to the organisations of the working time.

2. Main amendments brought by Law 12/2015

2.1 Salaries of the temporary agency employees

As a general note, temporary employment agreements become an effective and increasing legal tool for solving short term employment issues. According to the Romanian Association of Temporary Work Agency ("**ARAMT**"), the largest demand for temporary employees is currently registered in the field of services and oil and gas. As per ARAMT's statistics, currently, in Romania there are approximately 55,000 temporary employees who are generally used to cover: (i) full time employees' temporary absences, (ii) specific job positions or (iii) temporary increase of work load.

According to the amendments brought by Law 12/2015, the salary received by a temporary agency employee shall not be lower than the salary received by any other employee of the user (ie. the beneficiary of the temporary employee's services) rendering an identical or a similar type of work. In the event the user does not have an employee rendering an identical type of work, the salary of the temporary agency employee shall be determined by reference to the salary received by an employee with a similar job position, as mentioned in the collective bargaining agreement concluded at user's level.

2.2 Annual Leave

2.2.1 Outstanding annual leave

The amended form of art. 146 of the Romanian Labour Code extends the term enabling the employee to take his outstanding annual leave up to *18 months*. Under the former provisions of art. 146, the employer was under the obligation to grant the annual leave *by the end of the next year* to all employees who, during a calendar year have not taken their entire annual leave.

The new regulations also state that the employee's impossibility to take his annual leave has to be well grounded (Romanian "*motive justificate*"). Since the law does not define what "well grounded" means, this will be assessed on a case by case basis and it is to be further clarified by case law.

2.2.2 Term of the annual leave

As per the former provisions of the Labour Code, the annual leave of an employee was granted proportionally with the activity actually performed by the respective employee in the specific calendar year. Under the new provisions, the employee is entitled to the annual leave mentioned in his employment agreement, irrespective of the number of worked days. In addition, the sick leave, the maternity leave, the maternity risk leave or the leave for attending a disabled child does not longer impact on the duration of the annual leave. It is to be noted that even in cases where the sick leave lasts for the entire calendar year, the employee is still entitled to his annual leave that should be rescheduled in 18 months as of the end of the year during which the sick leave was taken.

2.3 Work Seniority

Pursuant to the new provisions of Law no. 12/2015, unauthorised absence from work and unpaid leaves are deducted from the term of the work seniority. Such provisions shall not apply however in case of unpaid professional training leaves initiated by the employee, in accordance with articles 155 and 156 of the Labour Code.

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