

Romania

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Legislation and agencies

1 What are the main statutes and regulations relating to employment?

The main framework governing labour relations consists of the Romanian Constitution (articles 41 and 42 specifically concern labour), the Labour Code and collective bargaining agreements (at national, activity-field and company level). There are also special statutes and regulations, which mainly refer to labour safety and labour protection, protection against discrimination and harassment at work, employment-related procedures, collective bargaining agreements, trade unions, employees' protection against dismissals, social security, etc.

2 Is there any legislation prohibiting discrimination or harassment in employment?

The Labour Code protects employees against discrimination based on gender, sexual orientation, genetic characteristics, age, nationality, race, colour, religion, political opinions, social background, disability, family status and responsibilities, trade union membership or trade union activities. Also, the Criminal Code, Law 202/2002 on equal opportunities for men and women and Government Ordinance 137/2000 on the prevention and sanctioning of all kinds of discrimination establish specific rules meant to protect employees against sexual discrimination and harassment at work.

3 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

Employers' obligation to protect the employees' privacy and personal data is stated in the Labour Code. The rules applicable to employees' data protection are established by Law 677/2001 on persons' protection in connection with personal data processing and free circulation of such data, and also by the general regulations governing the right to an intimate, family and private life in connection with personal data processing.

Pursuant to Law 677/2001, employees' personal data may be lawfully processed by employers if this is required for the execution of employment contracts; based on the written consent of the employee; or if the processing of employees' personal data is justified based on a legitimate interest provided by the law. When processing employees' personal data, employers must observe the legal rights of the employees related to data protection, such as the right to access and rectify personal data; to oppose the processing of personal data; to oppose the implementation of a decision made by the employer that may affect employees' privacy.

4 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The enforcement of employment legislation is made by the Romanian courts (through their specialised labour departments) and by the Labour Inspectorate, which is the body of the central public administration in charge of implementing this legislation and of sanctioning employment-related contraventions.

Worker representation

5 Is there any legislation mandating the establishment of a works council or workers' committee in the workplace?

Law 217/2005 on the establishment, organisation and functioning of the European Works Council implements into Romanian legislation Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

In addition, there are regulations providing for the employers' obligation to inform and consult the employees or their representatives, or both, in connection with specific employment issues, mainly in the case of employees affected by a business transfer and in the case of collective dismissals. Employees are also consulted and informed of the economic evolution and the business situation of their employers, the evolution of the workforce's employment within the company, as well as on any decisions by the employer which may lead to significant changes in the labour organisation.

Background information on applicants

6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

As a matter of principle, background checks are allowed to the extent that the information obtained as a result thereof should serve the sole purpose of assessing the employee's capacity for the position and his or her professional abilities. However, when performing background checks on applicants with their former employers, the information required must be limited to the positions held by the applicant and the duration of his or her employment, it being mandatory for the applicant to be previously informed of the background check. In case the background check is performed by a human resources company or another entity hired by the employer to identify potential employees, the above restriction is not applicable.

7 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

In Romania, a medical examination is a mandatory condition for employment. Employment contracts can be concluded only based on the medical certificate issued after the examination, certifying that the applicant is fit for the respective position. Therefore, the employer may refuse to employ an applicant who has not been medically examined. The employment of an applicant without a medical examination or without the above-mentioned medical certificate, or without either, is considered a contravention and is sanctioned with a fine ranging between 500 and 2,000 Romanian lei (approximately €150 to €600). In case the employment contract is concluded without a medical certificate, the employment contract is void; yet, it can be retroactively validated if the employee obtains the certificate after his or her employment.

Employers are, however, prohibited from requesting a pregnancy test upon employment.

8 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

Romanian legislation does not restrict or prohibit the employer from requesting the drug and alcohol testing of applicants if this is necessary to establish if they are fit for the position.

Hiring of employees

9 Are there any legal requirements to give preference in hiring to particular people or groups of people?

Generally, employers may freely choose their employees. However, employers may be bound to give priority to particular persons or group of persons by law or by collective bargaining agreements. For example, employers having at least 75 employees are bound by law to hire persons with disabilities who will represent at least 4 per cent of the total number of employees. Also, according to the national collective bargaining agreement currently in force, the employer must give preference in hiring to its employees applying for a vacant position if the employee obtains the same result in the employment competition as an applicant from outside the company. The employer shall also give preference in hiring to its part-time employees when there are full-time vacancies within the company.

10 Must there be a written employment contract? If so, what essential terms are required to be evidenced in writing?

Employment contracts must be executed in written form, prior to the commencement of employment relations. The obligation to ensure the execution of the contract in written form is incumbent on the employer. Moreover, the law provides for a standard form of the employment contract, which must include at least the following:

- the identity of the parties;
- the place of work or the possibility of working in different places, if the employee does not perform his or her work in a fixed place;
- the employer's address;
- the employee's position;
- any specific risks related to the position;
- the date of entry into force of the employment contract;
- the duration of the employment contract;
- the duration of the annual vacation;
- the notice to be given between the parties in case of unilateral termination of the contract;

- the base salary and other salary-related incomes and payment terms;
- the normal work duration;
- any applicable collective bargaining contracts; and
- the duration of the probationary period.

If the employee performs his or her activities abroad, the employment contract will be completed with: the duration of the work to be performed abroad; the currency in which the salary will be paid and the payment method; and the allowances to be paid for the performance of the employee's work abroad.

11 To what extent are fixed-term employment contracts permissible?

Fixed-term employment contracts may only be used for the performance of a temporary and precise task in the cases expressly established by law, that is, for replacing an employee whose contract is suspended; or for covering a temporary increase in the employer's activity; or for performing seasonal work. The maximum duration of a fixed-term employment contract is 24 months, including two permitted extensions. The 24-month period also applies in case of successive fixed-term contracts, provided that there may be maximum of three such contracts.

12 What is the maximum probationary period permitted by law?

The maximum duration of the probationary period is set by the Labour Code and depends on the type of employment contract.

The maximum probationary period for contracts of undetermined duration is 30 calendar days for executive positions and 90 calendar days for management positions. In addition to this general term, the law provides for specific maximum probationary periods, as follows: 30 calendar days for persons with disabilities, regardless of their position; five working days for unqualified workers; and six months for persons graduating from educational institutions on their professional debut.

In case of fixed-term contracts, the maximum probationary period is: five working days for agreements of less than three months' duration; 15 working days for agreements for three to six months' duration; 30 working days for executive positions and 45 working days for management positions for agreements of more than six months' duration.

The probationary period may not be extended by the employer or the mutual agreement of the parties over the legal limit.

13 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

A non-competition clause is valid if it:

- is established for a maximum of two years' duration as of the termination of the employment contract (duration to be established by the parties);
- is limited to specific activities, to certain third parties in favour of which the employee is prohibited to perform such activities and to a specific area where the employee may actually compete with the former employer; and
- provides for a monthly indemnification, of a minimum of 50 per cent of the average salary received by the employee during the last six months of employment. The indemnification is to be paid after the termination of his or her employment until the expiry of the non-competition agreement's duration. If the indemnification is not paid to the employee, the non-competition clause cannot be enforced against him or her.

14 What are the primary factors that distinguish an independent contractor from an employee?

The main difference that distinguishes an independent contractor from an employee is the freedom of performance enjoyed by the independent contractor versus the subordination of the employee to the employer. The employee performs his or her activity according to an employment contract governed by labour legislation, while the activity of the independent contractor is governed by commercial legislation. Therefore the independent contractor is not subject to the restrictions provided by labour legislation (ie, work duration).

Foreign workers

15 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

The law does not limit the number of long-term or short-term work visas, but only the number of work permits that may be issued every year. The maximum number of work permits for 2008 is 10,000 (including the work permits for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction).

16 Are spouses of authorised workers entitled to work?

Being the spouse of a person holding a work permit does not represent a legal ground for obtaining a work permit in Romania. To obtain a work permit, the spouse must personally fulfil all the conditions required by the law and must follow the legal application procedures. However, the spouse of a Romanian citizen or of a citizen of one of the EU member states can work in Romania without being required to obtain a work permit (see question 15 and 17).

17 What are the rules for employing foreign workers and what are the sanctions of employing a foreign worker that does not have a right to work in the jurisdiction?

Generally, to work in Romania, including in case of assignment from a corporate entity to a Romanian-related entity, a foreigner must obtain a work permit. The work permit is granted based on a long-term work visa, except when the applicant is exempted from the obligation to obtain a visa based on a bilateral or multilateral treaty.

By way of exception, certain foreigners are not required to obtain a work permit, but only to notify the labour authorities on the commencement of their work in Romania (eg, foreigners domiciled in Romania; citizens of EU member states and their family members; foreigners appointed as managers of a Romanian subsidiary or representative office of a foreign legal entity; family members of Romanian citizens).

Employing foreign workers implies the observance of several rules:

- foreign workers must comply with all legal requirements applicable to a Romanian citizen in order to be employed – for example, age, education and professional qualifications (when the offered position specifically requires a certain level of education or qualifications), medical certificate;
- the employer must obtain a proof from the National Agency for Employment that there are no local or EU workers who are willing and qualified to undertake the offered position;
- the employer must publish the advertisement for the vacant

- position in a daily newspaper with wide circulation; and
- the employer must perform a selection following the advertisement and draft minutes as a result thereof.

If validity conditions are not met upon employment, the employment contract is void. It may be retroactively validated if such conditions are met after the employment (eg, if the work permit is obtained after the execution of the employment contract).

Employers who do not observe the legal employment requirements may be subject to fines. However, there are cases where managers or other employees in charge of performing labour-related formalities may be sanctioned with imprisonment (eg, if employment is given without paying the relevant taxes).

18 Is a labour market test required as a precursor to a short or long-term visa?

Save for the rules set out in question 17, there are no market tests required as precursor to a short or long-term visa.

Terms of employment

19 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

The normal work duration in Romania is eight hours per day and 40 hours per week. By collective or individual negotiations, a different duration of the working day may be established within the same limit of 40 hours per week, provided, however, that the daily work duration does not exceed 10 hours. By negotiations carried out at the company level, for the work schedule to comply with production needs, a weekly working schedule between 36 and 44 hours may be established, provided that the monthly average is of 40 hours per week.

Employees (save for those under 18 years and part-time employees) may perform a maximum of eight hours of overtime per week. Therefore, the maximum work duration, including overtime, cannot exceed 48 hours per week. Exceptionally, work duration can be extended over 48 hours per week if the average working time computed for a three-month period does not exceed 48 hours per week. This maximum limit cannot be extended unilaterally or by the parties' agreement. By the collective bargaining agreements at the field-of-activity level or at company level, additional conditions for the performance of overtime may be required, such as the consent of the employees' representatives for the performance of overtime exceeding a certain duration.

20 What categories of workers are entitled to overtime pay and how is it calculated?

All employees who perform overtime are entitled to compensation consisting of free paid hours granted within 30 days of the performance of the overtime. If this compensation is not possible, the employees receive overtime pay. Overtime pay is computed on the basis of the hourly rate applicable to the employee with a surcharge, which is currently of 100 per cent.

21 Is there any legislation establishing the right to annual vacation and holidays?

The Labour Code provides for employees' right to annual paid vacation and for the minimum duration thereof. The general minimum vacation is 20 working days per year, computed pro rata with the period of the year effectively worked for the employer. By way of exception, certain categories of employee are entitled

to different annual vacations, as follows:

- 24 working days for employees under 18 years of age;
- 20 working days in the first year of employment;
- for employees with disabilities or working in dangerous or harmful conditions, an additional three working days' vacation per year; and
- for blind employees, an additional six working days' vacation per year.

By collective bargaining agreements, a longer duration of annual vacation may be established. For example, by the national collective bargaining agreement currently in force, the general minimum vacation has been extended from 20 to 21 working days. For the duration of the annual vacation, employees receive an indemnification at least equal to their base salary plus their permanent indemnities or bonuses, pro rata with the duration of the vacation.

Employees are also entitled to paid legal holidays on: 1 and 2 January, the first and second days of Easter, 1 May, 1 December and the first and second days of Christmas. During the legal holidays, employees are paid as for normal working days.

Any convention by which an employee waives or restricts his or her right to annual vacation or to the legal holidays established by law is null and void, the employer and the employee being allowed to agree only upon a higher number of paid leave vacation days or upon additional holidays.

22 Is there any legislation establishing the right to sick leave or sick pay?

Government Emergency Ordinance 158/2005 on social health indemnification and leave provides the right of the employees domiciled or residing in Romania to paid sick leave for a maximum of 183 days per year (in special cases, for serious diseases established by law, the paid sick leave may range from six months to one-and-a-half years). If the employee has not recuperated within the above-mentioned period, any doctor specialised in labour medicine can propose the retirement of the employee on sickness grounds or, by way of exception, can decide to extend the duration of the sick leave for a maximum period of 90 days.

During their sick leave, employees receive an indemnification amounting to 75 per cent of their average monthly income (ie, salary plus other salary-related rights) received in the last six months. In special cases, when the employee's incapacity is caused by tuberculosis, AIDS, a group-A infectious-contagious disease, or medical-surgical urgency, the indemnification amounts to 100 per cent of the above sum. The indemnification is borne by the employer for the first five days of leave and by the National Social Health Insurance Fund for the rest of the days.

23 In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

According to the Labour Code and the national collective bargaining agreement, employees are entitled to:

- paid free days, varying between one and 10 days, for special family events or for other circumstances expressly provided by law (ie, for marriage of the employee or of his or her child; for birth of a child; for death of a relative; for blood donors; for changing to a workplace in another locality);
- unpaid leave for personal reasons, the duration of which is limited only in certain specific cases (ie, a mother who benefited from paid leave for looking after a child under two

years has the right to unpaid childcare leave for an additional one-year period); and

- paid or unpaid leave for professional training purposes. A maximum 80 hours of paid leave is granted to the employee if the employer is not able to ensure access to professional training. The indemnification to be paid to the employee in this case is the same as for the annual vacation (see question 20). Unpaid leave for professional training must be granted whenever required by the employee, save when the absence of the employee may seriously damage the employer's activity (in which case the prior approval of employees' representatives is required). The duration of the unpaid leave is limited by the law in certain cases. For example, the unpaid leave granted to the employee for preparing for his or her graduation is limited to 30 days.

24 What employee benefits are prescribed by law?

Employees are entitled to a minimum wage, established by law. The current minimum wage for unqualified workers is 500 lei (€140) and 540 lei (€151), as of July 2008. The minimum wage for qualified workers is calculated by applying to the above amount a coefficient provided by the national collective bargaining agreement, which depends on employees' professional qualification.

Besides a wage, employees are also entitled to benefits established by the law or agreed between the parties. The main mandatory benefits consist in bonuses (for work under special, hard, embarrassing or hazardous working conditions; harmful working conditions; overtime; seniority; night work; and work during weekly rest days and legal holidays) and compensation for specific family situations (ie, death of the employee, death of a relative of the employee, childbirth). Other mandatory benefits, such as meal vouchers, may be provided in the applicable collective bargaining agreements at a field of activity level.

25 Are there any special rules relating to part-time or fixed-term employees?

Part-time employees have the same rights as full-time employees, granted, however, pro rata to their work duration. Part-time employment contracts must include:

- the work duration and the work schedule;
- the conditions applicable to the amendment of the working schedule; and
- an interdiction on performing overtime, save for force majeure events and other urgent situations meant to prevent disasters or to remove the consequences of disasters.

If the above information is not included in the employment contract, the contract is deemed as being a full-time contract.

The employment and working conditions of fixed-term employees cannot be less favourable than those for employees on contracts for an undetermined term due to the duration of their employment contract, except if sustained by objective reasons.

Liability for acts of employees

26 In which circumstances may an employer be held liable for the acts or conduct of its employees?

The employer is held jointly liable if its employees cause damages to any third party during the performance of their normal work duties. If the employer pays the damages, it will be entitled to request reimbursement from the responsible employees.

Taxation of employees**27 What employment-related taxes are prescribed by law?**

Both employers and employees are bound to pay social security contributions (such as contributions to the social insurance and health insurance funds, contributions for professional accidents and diseases, contributions to the unemployment insurance fund). Employees are also subject to a 16 per cent income tax. Taxes and contributions due by employees are computed, withheld and paid by employers to the relevant authorities.

Employee-created IP**28 Is there any legislation addressing the parties' rights with respect to employee inventions?**

Employees' intellectual property rights over their inventions are governed by Patent Law 64/1991. Generally, intellectual property rights over the inventions created by the employee belong to him or her. However, intellectual property rights belong to the employer if the invention is created during the performance of the employee's work, by using the specific technical capacities of the employer or the information available at the workplace; or the invention is created based on a research agreement or based on an employment contract providing for specific invention responsibilities in the employee's charge.

Business transfers**29 Is there any legislation to protect employees in the event of a business transfer?**

Employees' rights in the event of a business transfer are protected by Law No. 67/2006 regarding protection of the employees' rights in case of business transfer of the company, unit or parts thereof. This states that all the rights and obligations of the entity that transfers the business arising out of the labour contracts are passed to the entity that receives the business. No transfer can be used as reason for individual or collective dismissals. Employers' obligations provided in the applicable collective bargaining agreement cannot be renegotiated sooner than one year.

Termination of employment**30 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?**

Dismissal reasons are expressly and restrictively established by the Labour Code. The dismissal reasons related to the employee are: gross misconduct of the employee at work (gross disciplinary breach or repeated disciplinary breaches); the employee is imprisoned for more than 30 days; the employee is found to be medically or professionally unfit for his or her position; or the employee has reached the standard retirement age but has not applied for his or her retirement. Employees may also be dismissed when the positions they hold are abolished for reasons not related to them, provided that the respective abolition is effective and has a real and serious cause.

31 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Employers must give notice of termination of employment to the employee prior to dismissal. The minimum notice period is established by the Labour Code as 15 working days. A longer duration of the notice period may be established by collective bargaining agreements or by individual employment contracts. For example, the current national collective bargaining agree-

ment has extended the minimum notice duration from 15 to 20 working days.

Under the former national collective bargaining agreement, the employer was entitled to provide pay in lieu of notice. This possibility is no longer provided.

32 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

The granting of a notice period to the employee is not required if the employee is dismissed: for disciplinary misconduct during work; for being imprisoned for more than 30 days; for reaching the standard retirement age and not asking for his or her retirement; or for being professionally unfit for the position, but in this case, only during the probationary period.

33 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

According to the national collective bargaining agreement, employees dismissed for reasons not related to them are entitled to severance pay equal to one base salary. Additional severance payments can be established by other applicable collective bargaining agreements.

34 Are there any procedural requirements for dismissing an employee?

According to Romanian law, dismissals are made according to strict procedural rules, although no prior approval from a governmental agency is required. The dismissal is ordered by a dismissal decision issued by the competent management bodies of the employer. To be valid, the dismissal decision must be issued and communicated to the employee in writing. Certain elements, such as the reasons for dismissal and the notice period must be included in the dismissal decision.

Specific procedural rules exist in case of dismissal for disciplinary misconduct or for professional unfitness. In both cases, the employer has to perform a prior inquiry in connection with the employee.

In case of dismissal for disciplinary misconduct, the dismissal decision must include, among others, a description of the employee's facts, the legal grounds for the dismissal and the period within which the decision may be challenged. The dismissal decision can be issued within 30 calendar days from the date when the employer acknowledges the employee's misconduct, but no later than six months from the date when the misconduct was committed.

A very strict dismissal procedure is also established in case of collective dismissals (see question 36).

Failure by the employer to observe any of the dismissal procedural requirements may result in the cancellation of the dismissal decision.

35 In what circumstances are employees protected from dismissal?

Pursuant to the Labour Code, employees cannot be dismissed:

- during a period in which they are suffering from a temporary work disability;
- during quarantine leave;
- during pregnancy, if the employer has acknowledged the employee's pregnancy prior to issuance of the dismissal decision;
- during maternity leave;

Update and trends

Since the beginning of 2007 and during 2008 no significant amendments have been made to the Labour Code. The labour legislation is still very protective of employees and the general practice of Romanian courts is also consistently in favour of employees. The terms under which work conditions may be established and amended, the rules applicable to dismissals and other labour-related issues are strictly regulated and therefore rather difficult for employers to deal with. Moreover, the minimum rights of the employees established by the labour legislation cannot be waived or diminished not even if employees expressly agree thereto.

- during leave to look after a child under two years of age (or three years of age for children with disabilities);
- during leave to look after a sick child under seven years of age (or 18 years of age for children with disabilities);
- during the period during which the employee fulfils his military service (no longer applicable since the military service is no longer mandatory pursuant to Romanian laws);
- during the annual vacation; or
- for professional unfitness, for six months after an employee who was on maternity leave or on leave to look after a child who is under two years of age returned to work.

Employees' representatives and employees holding an eligible position within a trade union are also protected against dismissal. Employees' representatives cannot be dismissed for reasons not related to them or for professional unfitness. Employees holding an eligible position within a trade union cannot be dismissed during their mandate save for disciplinary misconduct; and for a two-year period after the termination of their mandate, for reasons not related to them, for professional unfitness or for reasons related to their mandate.

36 Are there special rules for mass terminations or collective dismissals?

In case of collective dismissals, the employer must consult the employees and must notify the employees' representatives and the labour authorities of the envisaged collective dismissal. If the

employer maintains its decision to proceed with the dismissal after consultation with the employees' representatives, it must again notify the employees' representatives and the labour authorities. The timing of the collective dismissal procedure is strictly provided by the law. Employees' consultation must be initiated with 15 to 30 days prior to the first notification mentioned above, depending on the total number of employees of the dismissing employer. Dismissal decisions may be issued only after expiry of a 30-day period as of the second notification mentioned above.

If the activity is resumed within a nine-month period after the collective dismissal, the dismissed employees must be re-offered their former positions. Other persons may be hired for such positions only if the dismissed employees refuse to return to work.

Dispute resolution**37 May the parties agree to private arbitration of employment disputes?**

In Romania, the courts of law have exclusive jurisdiction over employment disputes.

38 May an employee agree to waive statutory and contractual rights to potential employment claims?

Employees cannot waive or diminish any of their labour-related rights. Any such waiver or diminishment is deemed null and void.

39 What are the limitation periods for bringing employment claims?

Employment claims can be filed as follows:

- claims against the employer's decision related to the conclusion, performance, amendment, suspension or termination of the employment contract or for applying a disciplinary sanction, within 30 calendar days of the communication of such decision to the employee;
- claims for salary rights or for damages, within three years of the date the requested amounts are due;
- claims related to the validity of the employment contract or clauses, during the entire duration of the employment contract;
- claims related to the non-observance of collective bargaining agreements, within six months of the date such provisions should have been observed; and
- all other cases not included above within three years of the first date the claim could have been filed.

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