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## **NEW MEASURES TO SUPPORT THE EMPLOYEES AND THE EMPLOYERS IN THE CONTEXT OF THE SPREAD OF CORONAVIRUS SARS-CoV-2**

### **Context**

On 10 August 2020, the Government Emergency Ordinance no. 132/2020 on the measures to support the employees and the employers in the context of the epidemic determined by the spread of coronavirus SARS-CoV-2, as well as for stimulating the employment increase (“**GEO 132/2020**”) was published in the Official Gazette, Part I no. 720 of 10 August 2020.

The provisions of GEO 132/2020 came into force on 10 August 2020, with the mention that the provisions relating to the sanctions included in the ordinance will come into force within 30 days from publication of GEO 132/2020 with the Official Gazette of Romania.

### **Scope**

In the context of the prevention and control of the risk related to the spread of Covid-19 virus, the competent authorities deemed that it is necessary to implement certain measures for both consolidating the labor market and stimulating the employment of persons who lost their job or could not get hired.

Thus, the Romanian Government adopted GEO 132/2020, which includes, among others, the Kurzarbeit model, a solution originating in Germany relating to measures for work flexibility, through which the employer may reduce the working time of the employees, and the employees receive the salary corresponding to the work actually performed from the employer, as well as a percentage of the salary corresponding to the unperformed work from the state.

The provisions of GEO OUG 132/2020 do not apply to:

- public institutions;
- employers in bankruptcy, dissolution, liquidation or with suspended activities;
- employers registered in non-cooperative jurisdictions for tax purposes.

The benefit amounting to 75% of the difference between the gross salary and the salary due according to the hours actually worked (detailed in the following section) **are not cumulated for the same employee with:**

- the settlement measure granted to the employees who have employment agreements concluded for a definite period of time according to GEO 132/2020, in a percentage of 41.5% of the salary corresponding to the days worked, but no more than 41.5% (i.e. RON 2,253) of the average gross salary;
- the measures granted according to art. I and III of GEO no. 92/2020;
- the measures for stimulating the employers funded from the unemployment insurance budget.

## Main regulations

### A. Measures for the employees with an individual employment agreement (“IEM”)

- By derogation from the provisions under the Labor Code stipulating that, for full-time employees, the normal working time is 8 hours/day and 40 hours/week, GEO 132/2020 introduces **the possibility of the employers, which have their activity temporarily reduced due to the state of emergency/alert/siege, to reduce the working time of the employees by up to 50% of the time provided for in the IEM.**
- For adopting the measure regarding the reduction of the working time according to GEO 132/2020, **the employers should fulfill the following conditions:**
  - a) The reduction of the working time for at least 10% of the number of employees of the unit;
  - b) The application of the measure is justified by the decrease of the turnover in the month preceding the application of such decision or, at the most, in the month before its previous month, by at least 10% compared to the similar month in the previous year.
- This measure will be adopted by informing and consulting the trade union, the employees' representatives or the employees, before communicating the decision to the employee.
- The employer will issue a **decision to reduce the working time**, which will establish the organization of the work schedule of the employee for the entire month, taking into consideration that the working time is reduced for **at least 5 consecutive working days for each employee**. The decision of the employer will include (a) the reduction of the working time, (b) the work schedule, (c) the manner of its distribution per days and (d) the related salary rights.
- The employer may also order **the reduction of the working time in case of the work schedule in shifts, as well as in case of unequal work schedule.**
- The employer's decision will be **communicated to the employee at least 5 days before the actual application**. Furthermore, this decision **will be registered in REVISAL no later than the day before it is effective.**
- During the reduction of the working time, the employees **benefit from both the salary for the work hours actually performed, and from a benefit of 75% of the difference between the gross base salary provided in the IEM and the gross base salary corresponding to the time actually worked in that month.**
- **The employers pay the benefit to the employees on the payment date of the salary for the relevant month, and they will further settle the paid amount from the unemployment insurance budget.**
- If the employer fails to recover the benefit from the unemployment insurance budget, **it is prohibited to request it from the employee.**
- During the reduction of the work schedule, **it is prohibited to employ/ subcontract for performing identical or similar activities** as those carried out by the employees whose working time was reduced (this interdiction being applicable to the subsidiaries, branches or other secondary offices), as well as **the employees who have a reduced schedule to perform overtime.**
- The relevant employee will benefit from all other rights provided in the IEM or in the Collective Bargaining Agreement, pro rata to the working time actually performed.
- The employee whose working time was reduced according to GEO 132/2020, cannot be also subject to the measure of reducing the work schedule from 5 days to 4 days per week, resulting in the corresponding decrease of the salary, for periods exceeding 30 working days (in accordance with art. 52 par. 3 of the Labor Code).

- In the period when the reduction of the working time is applicable, **it is prohibited to commence collective dismissals.**

- The benefit is a salary income and income tax, social contributions and work insurance contribution will be paid.
- The employers **may grant bonuses or other additions to the base salary for the management structure ONLY after the completion of the period when the reduction of the working time is applicable.**

#### **B. Measures for the employees with IEM concluded for a definite period of time**

- For the employees who conclude the IEM for a definite period of time up to 3 months, the employer may opt to incur from the unemployment insurance budget a share of 41.5% of the salary corresponding to the days worked for a working time of 8 hours/day, but no more than 41.5% (i.e. RON 2,253) of the average gross salary provided under the law (RON 5,429). The measure applies until 31 December 2020, but no more than 3 months.
- The employer has the obligation to fully pay to the employee the remuneration for the work, and the said amount will be further settled by the National Employment Agency.
- The settlement shall be made within no more than 10 days from the submission of the application according to the procedure established based on a Government Decision. The employers will submit the application, the affidavit showing the fulfillment of the requirements established under GEO 132/2020 and the list of the persons for whom the settlement of the amount undertaken by the legal representative is requested.

#### **C. Measures for the employees who perform telework**

- In case of telework, **the employers may be provided, only once, for each teleworker, with a financial support of RON 2,500, for purchasing packages of technological goods and services required for teleworking.**
- **The amount is granted to the employers** in the order of the requests until 31 December 2020, from the unemployment insurance budget, through the National Employment Agency (up to the allotted funds), **for the employees who performed telework for at least 15 working days during the state of emergency.**
- **Within 30 days as of the receipt of this amount, the employer has the obligation to provide the National Employment Agency with supporting documents regarding the purchase of the goods.** Otherwise, the employer shall fully repay the amount received within 30 days from the expiry of the above-mentioned period for the delivery of the supporting documents.

*Note:* The granting manner and the categories of goods which can be purchased are established by order of the Minister of Labor and Social Protection published within 10 days as of the publication of GEO 132/2020.

#### **D. Measures for “professionals” according to art. 3 par. (2) of the Civil Code**

- **In case of the temporary reduction of the activity, the professionals receive a monthly benefit of 41.5% of the average gross salary** (i.e. RON 5,429). Thus, the benefit will amount to RON 2,253.
- The benefit will be paid from the state budget, through the National Agency for Payments and Social Inspection and through the county, respectively Bucharest agencies.
- The income tax, social insurance contribution and social health insurance contribution are due for the benefit, and the tax liabilities are declared in the single declaration.

- The actual period of application of the measure, the categories of professionals, as well as the procedure for payment of the benefit will be established by means of a Government Decision. As an exception, in 2020, this benefit will be received by the professionals and the persons that concluded individual employment agreements based on Law no. 1/2005, who received the benefit provided under art. XV par. (1) of GEO no. 30/2020.

#### **E. Measures for day workers**

- The day workers, who carry out their activity in the industries affected by the effects of SARS-CoV-2 as a result of business interruption or restriction, may benefit for a maximum period of 3 months (no later than 31 December 2020), at the sole discretion of the work beneficiary, from an amount of 35% of the remuneration due for each work day.
- This amount will be paid by the work beneficiary, from its own budget, at the time of payment of the remuneration for the daily work, and will be further fully settled from the state budget, through the National Agency for Payments and Social Inspection. The settlement will be performed within no more than 10 days from the date of submission of the application according to the procedure established based on a Government Decision.
- The application along with the lists of day workers receiving the benefit will be monthly submitted by the work beneficiaries with the competent agencies for payments and social inspection, for the previous month, until the 5<sup>th</sup> day of each month, in electronic form. If the work beneficiaries submit the application at a further date than the 5<sup>th</sup> day of a month, the amount will be settled in the following month.
- The benefit due to day workers is a salary income for which income tax and social insurance contributions are due.

#### **F. Sanctions**

- Receiving one or more employees at work or the performance of any other type of work, including telework or work from home, by one or more employees, outside the work schedule established in the decision to reduce the working time is an offence and is sanctioned with a fine of RON 20,000 for each employee, without exceeding the aggregate amount of RON 200,000

Note: The procedure for accessing the measures under GEO 132/2020 will be published in a Government Decision adopted within maximum 30 days calculated as of 10 August 2020.

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