

LEGAL ALERT

APRIL 8, 2021

Major legal amendments for granting the Kurzarbeit allowance

Context

On 5 April 2021, Law no. 58/2021 approving Government Emergency Ordinance no. 211/2020 on the extension of the application of certain social protection measures adopted in the context of the spread of the SARS-CoV-2 coronavirus, as well as amending Government Emergency Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemic caused by the spread of the SARS-CoV-2 coronavirus, as well as for stimulating the employment increase ("Law 58/2021") was published in the Official Gazette of Romania, and will enter into force on 8 April 2021.

Within 30 days calculated from 8 April 2021, Government Decision no. 719/2020 ("GD 719/2020") approving the procedure for settlement and payment of the amounts granted based on Government Emergency Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemic caused by the spread of the SARS-CoV-2 coronavirus, as well as for stimulating the employment increase, as further supplemented ("GEO 132/2020") will be amended accordingly.

Scope

For a better understanding of the legislative process, we will hereinafter present the chronological timeline for regulating the employer's possibility to reduce the work schedule of the employees, according to the Kurzarbeit model previously implemented by other countries.

We thus mention that the support measures for reducing the work schedule in the context of the epidemic are grounded on the provisions of GEO 132/2020 amended by approving GEO 211/2020. By adopting Law 58/2021, major legislative amendments were brought to GEO 211/2020, and the provisions of GEO 132/2020 will be amended accordingly.

Main amendments and supplements

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- **Implementation procedure of the measure**
 - Law 58/2021 sets forth that for full-time employees, the normal duration of the working time is 8 hours/day and 40 hours/week, and the employers which have their activity temporarily reduced due to the state of emergency/alert/siege have the possibility to reduce the employees' working time by up to 80% of the daily, weekly or monthly duration provided in the individual employment agreement. Thus, in this context, it was deemed advisable to extend such reduction from 50% (as provided before the entry into force of Law 58/2021) to 80%, since the activities of the economic operators were reduced by more than 50%.
 - The measure is applicable during the state of emergency/alert/siege, as well as for a period of up to three months from the end of the last period when such state was established.
 - The reduction of the working time will be adopted by the employer with the approval of the trade union entitled to negotiate the collective bargaining agreement or, in case there is no such trade union, with the approval of the employees' representatives.

- The reduction of the working time will be implemented for a minimum period of five working days, included in the period of 30 calendar days calculated starting from the first day of effective application of the measure.
- The employer may issue a reasoned decision on the modification of the work schedule, whenever it deems necessary, with the observance of the procedure for obtaining the approval from the trade union or the employees' representatives.
- The employer's decision to reduce the working time should be communicated to the employee at least five days before the effective implementation of the measure. As an exception, the employer may communicate the decision to the employee 24 hours before the modification of the work schedule, in the following cases: (i) an increase in the activity occurred, requiring additional personnel or (ii) the replacement of an employee unable to work according to his/her work schedule is required.
- **Conditions for reducing the work schedule**
 - The employer may apply the reduction of the working schedule if the following conditions are met on a cumulative basis:
 - (i) the measure affects at least 10% of the employees of the business unit;
 - (ii) the reduction of the activity is justified by a decrease in turnover in the month preceding the application of the measure or, at most, in the month before the month preceding its application, by at least 10% compared to the same month or the monthly average turnover of the year preceding the establishment of the state of emergency/alert/siege, respectively 2019.
 - For companies newly-established in the period between 1 January and 15 March 2020, which have at least one employee, the decrease in turnover will be related to its amount achieved in the month before the reduction of the working time is applied.
- **Allowance granted to the employees**
 - The employees affected by the reduction of the work schedule will benefit from the salary paid by the employer for the hours of work actually performed, as well as from an allowance of 75% of the monthly gross base salary corresponding to the hours of reduction of the work schedule. This allowance will be paid to the employees on the date of payment of the salary for the relevant month, and will be further settled from the unemployment insurance budget.
 - If the employer's budget allows it, the allowance may be supplemented with amounts representing the difference up to the amount of the base salary, with the mention that such additional difference cannot be further settled.
- **Other special rules applicable in the period of working time reduction**
 - The persons who manage and/or administer the company may benefit from bonuses or other income, in addition to the base salary provided in the agreement, but only after the end of the period of application of this measure. Law 58/2021 was intended to provide for an extension from bonuses (as set forth in the previous regulation) to bonuses and other income, so as to cover a wider range of constituents of the salary.
 - Another major amendment under Law 58/2021 is the employer's possibility to hire other persons to replace the employees having their working schedule reduced, if the termination of the individual employment agreement occurred (a) by effect of law, (b) for reasons related to the employee or (c) by resignation of the employee. This is an exception from the prohibition to employ personnel to provide the same or similar activities as those provided by the employees having their working time reduced, as well as to subcontract activities carried out by employees having their working time reduced.

- **Documentation which should be submitted by the employer for the settlement of the Kurzarbeit allowance**

For the settlement of the amounts representing the Kurzarbeit allowance, in addition to the application, the employer should also submit the following documents:

- a) a copy of the decision on the reduction of the working time and proof of its notification to the employees, by any means commonly used by the employer to communicate with the employees;
- b) an affidavit of the employer, from which to result that the reduction of the activity occurred as a result of a decrease in turnover;
- c) a copy of the agreement concluded with the trade union or the employees' elected representatives or the proof of informing the employees in case there are no trade unions / employees' representatives;
- d) the list of the persons who will receive the allowance;
- e) a copy of the payroll documents, evidencing the payment of the allowance.

Taking into consideration such legal amendments, we may note that a simplification of the settlement procedure was intended, meaning that:

- the decision on working time reduction is not required to be signed by the employee for its acknowledgement, being sufficient that the employer submit the proof from which to result that such document was notified to the employees by means commonly used by the employer to communicate with the employees;
- the monthly trial balance was eliminated and replaced by an affidavit of the employer;
- a copy of the agreement with the trade union or the employees' representative or the proof of informing the employees (in case there are no representative trade unions or employees' representatives) will be provided.