

LEGAL ALERT



LABOUR AND SOCIAL PROTECTION REGULATIONS

CONTEXT

On 24 July 2020, the following statutes with significant impact in the field of labour relations were published in the Official Gazette of Romania, Part I:

- Law no. 151/2020 ("Law 151/2020") to amend and supplement Law No. 53/2003 - Labour Code, in force since 27 July 2020.
- Ordinance no. 120/2020 ("GEO 120/2020") on the establishment of support measures for employees and employers in the context of the epidemiological situation caused by the spread of coronavirus SARSCoV-2, in force since 24 July 2020.

SCOPE

Law no. 151/2020 includes significant amendments and supplements to the Labour Code, regarding the forms of discrimination and harassment as well as the penalties applicable under employment relationships. Thus, the spectrum of the criteria for classification of the facts that constitute the motive for discrimination was broadened, and, as an innovation for the Labour Code, the

definition of harassment, *inter alia*, was introduced therein.

Also, considering that during the state of emergency and the state of alert determined by the effects of the spread of the SARS-CoV-2 virus, measures were adopted with a strong impact on the labour market, GEO 120/2020 regulated the possibility of granting the furlough allowance to employees whose employers' activity was suspended as a result of the epidemiological investigation carried out by the public health directorates.

MAIN CHANGES AND ADDITIONS

A. Amendment and addition of the Labour Code by Law 151/2020:

a) Article 5 (2) - (4) of the Labour Code was amended, so that:

- In addition to the existing reasons, the discrimination based on belonging to a disadvantaged category was introduced in the exhaustive enumeration of the

situations that can be reasons for direct or indirect discrimination against an employee.

- Indirect discrimination was more precisely redefined as any stipulation, action, criterion or seemingly neutral practice that has the effect of disadvantaging a person based on one of the criteria of direct discrimination, unless such stipulation, action, criterion or practice is objectively justified by a legitimate purpose and whether the means to achieve such purpose are proportionate, appropriate and necessary.

b) **Article 5 of the Labour Code** was supplemented with five new paragraphs defining and explaining the following actions that do not comply with the principle of equal treatment of all employees and employers:

- Harassment at work means any type of behaviour that is based on one of the criteria of direct discrimination that has the purpose or effect of harming a person's dignity and leads to the creation of an intimidating, hostile, degrading, humiliating or offensive environment;
- Discrimination by association means any discrimination act or fact committed against a person who, although is not part of a category of persons identified according to the criteria of direct discrimination, is associated or presumed to be associated with one or more persons belonging to such a category of persons;
- Victimization means any adverse treatment in response to a complaint or lawsuit regarding a violation of the principle of equal treatment and non-discrimination;
- The forms of discrimination also include the act of ordering, in writing or orally, a person to use a form of discrimination, which is based on one of the criteria of direct discrimination, against one or more persons;

Note: Exclusion, distinction, restriction or preference in respect of a particular workplace is not discrimination where, by the specific nature of the concerned activity or the conditions under which the activity is performed, there are certain essential and

decisive professional requirements, provided that the purpose is legitimate and the requirements are proportionate.

c) **Article 59 of the Labour Code** was amended and the scope of reasons for which the dismissal of employees is prohibited was extended, so that they cannot be fired based on race, citizenship, ethnicity, colour, language, religion, social origin, genetic traits, gender, sexual orientation, age, disability, chronic noncommunicable disease, HIV infection, political choice, family situation or responsibility, union membership or activity, membership in a disadvantaged category.

d) **Article 260 (1) of the Labour Code** was supplemented with letter r), the ascendancy of letter q), stating that the non-observance of the above provisions, more precisely of Article 5 (2) - (4) amended and of the next 5 newly introduced paragraphs, as well as of Article 59 (1) of the amended Labour Code, is a civil offence and is punished with a fine from RON 1,000 to RON 20,000.

B. Support measures for employees and employers according to GEO 120/2020:

According to the sole article of GEO 120/2020, employees whose employers had their activity suspended as a result of the epidemiological investigation carried out by the county or Bucharest public health directorates also benefit from furlough allowance.

The amount of the allowance shall be calculated per day of suspension, for the entire period during which the employer's activity was suspended as a result of the epidemiological investigation and the period for which this allowance is collected shall not exceed 31 December 2020.

The period in which an employee is on sick leave and already receives the related social insurance allowance is incompatible with the granting of the furlough allowance regulated by this ordinance and is not considered a basis for calculation in this respect. In short, the two types of allowances shall not cumulate, and only the sick leave allowance shall be granted.

Furlough allowances granted to employees for the period in which the employer's activity was suspended as a result of an epidemiological investigation, are subject to the same tax regime applicable to furlough

allowances received by employees during the state of emergency, according to Article XI of the Government Emergency Ordinance no. 30/2020.



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