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Legal Bulletin

Employment Law

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Amendments of interest to employers concerning collective bargaining agreements, collective negotiations, employees' elected representatives and trade unions

On 22 December 2022, the Social Dialogue Law No. 367/2022 was published in the Official Gazette Nr. 1238 (**"Law No. 367/2022"** or the **"Social Dialogue Law"**), laying down new rules on the negotiation of collective bargaining agreements, representation in negotiations, the election of employees' / workers' representatives, as well as new ways of initiating industrial disputes.

Law No. 367/2022 entered into force on 25 December 2022. Social Dialogue Law No. 62/2011 was expressly repealed by the entry into force of the new legislative framework. Within 60 days from the entry into force of the new regulatory act, the provisions of Labour Code Law No. 53/2003 will be amended, so as to align any provisions that are contrary to the new regulation.

The main amendments and supplementations in the field of social dialogue are presented below:

1. Changes in terminology, new concepts introduced, or existing concepts detailed

Among the new definitions introduced by Law No. 367/2022 we mention:

- The concept of **"worker"** is introduced, which is defined together with the concept of "employee", as a natural person who is a party to an employment contract or an employment relationship and who performs work for and under the authority of an employer and enjoys the rights stipulated by law and by the provisions of the applicable collective bargaining agreements or contracts;
- The concept of "activity sectors" has been redefined as **"collective bargaining sectors"**, which are the national economy sectors in which the social partners agree to negotiate

collectively, and which are determined by the National Tripartite Council and approved by Government decision;

- **"Collective labour dispute"** is defined as a labour dispute between employees /workers, represented by trade unions or elected representatives, and employers /employers' organisations, **which has as its object**:

  a) the commencement, conduct or completion of negotiations on collective agreements or contracts;

  b) the failure to grant, on a collective basis, individual rights provided for in the applicable collective bargaining agreements, in the context in which a dispute in court has been started in this respect and has not been ended within a maximum of 45 days, for:

  i. at least 10 employees/ workers, if the employer has more than 20 employees and less than 100 employees;
  ii. at least 10% of employees/ workers, if the employer has at least 100 employees but less than 300 employees;
  iii. at least 30 employees/ workers, if the employer has at least 300 employees.

2. Introduction of the national collective bargaining agreement

A novelty in the field of collective agreements is that the possibility for a **national collective agreement** to exist is brought back at regulatory level.

3. Negotiation of collective bargaining agreements

Important legislative innovations concern the negotiation of collective bargaining agreements, as follows:

- The new Social Dialogue Law lowers the threshold for the employer's obligation to initiate collective bargaining. The new provisions establish that **collective negotiation** is compulsory in case of units with **at least 10 employees/ workers** (the previous threshold was at least 21 employees), as well as at the **level of the collective bargaining sector**;
- The collective bargaining **initiative** belongs to any of the **social partners**, not only to the employer or the employers' organisation, as was the case under the former regulation;
- The deadline by which the collective negotiation initiator is bound to initiate collective negotiation is increased, i.e. according to the new provisions, it is mandatory **to initiate collective negotiation at least 60 calendar days** (previously the deadline was 45 calendar days) **before expiry of the collective bargaining agreements/ addenda thereto**;
- The **maximum duration of the negotiation** is reduced from 60 calendar days to **45 days**. The maximum duration can only be exceeded by agreement of the parties;
- The additional information the employer must provide to the trade union and/or employees'/ workers' representatives within the collective negotiation is established, such as:
  i. the updated economic and financial situation of the unit, as well as **the prospect of its evolution for the next contractual period**;

ii. the situation, **structure and expected evolution** of employment and any **measures envisaged for the next contractual period**;

iii. the proposed measures concerning the **organisation of work, working hours and working time** for the next contractual period;

iv. the proposed measures concerning the **protection of the rights of employees/ workers in the event** of a transfer of the unit or of a part thereof;

v. measures proposed by the employer to **improve** employees'/ workers' **safety and health** at work during the next contractual period.

- The legislature establishes the **possibility for the social partners to also introduce in the collective bargaining agreements contractual clauses concerning the following elements**:

i. establishing **the minimum ranking coefficients** by categories of employees/workers, taking into account the corresponding occupational standards;

ii. the measures adopted for **the professional counselling and evaluation** of employees/ workers;

iii. measures relating to **the harmonisation of family life** with the professional objectives, working time and rest time;

iv. regulations on **working conditions** and those relating to the employees'/ workers' **safety and health at work**;

v. methods of **informing and consulting** the employees/ workers, which exceed the law.

4. Duration of the collective bargaining agreement

The new law establishes **an exception** to the rule according to which the collective bargaining agreement is concluded for a fixed period, which **may not be less than 12 months and longer than 24 months**, respectively, unless **the collective bargaining agreement is concluded for the duration of the performance of a specific work**.

5. Trade unions

Among the amendments brought by the new Social Dialogue Law, the following provisions regarding trade unions are noted:

- The conditions for the establishment of a trade union are changed, **by reducing the minimum number of members** from 15 employees in the same unit, to:

i. **at least 10 employees/ workers in the same unit**, or

ii. **at least 20 employees/ workers from different units of the same collective bargaining sector**.

- **The scope of the trade union members' rights is extended**, and **prohibition** is established **as regards: the modification and/ or termination of employment contracts** or the employment relationship or the professional relationship of trade union members, **any exclusion** of members from the employment process, transfer, demotion, deprivation of training opportunities, as well as any other actions or inactions that cause harm to trade unions members, for reasons relating to trade union membership or activity;
- **The possibility** for the employer to invite the representative trade union to participate in the work of the board of directors or other similar body **is replaced by the obligation to invite the representative trade union only to discuss issues of professional and social interest with an impact on employees/ workers**, in accordance with Law No. 467/2006 establishing the general framework for informing and consulting employees. If there is no representative trade union at unit level, the trade union organisations together with the employees/ workers appoint an elected representative to participate in those discussions;
- The **representativeness thresholds** for the social partners have been lowered, with the new law stipulating **that a trade union can be representative at unit level if it comprises at least 35% of the employees/ workers** in a legal employment/ professional relationship with that company (as opposed to at least 50%+1, the previous threshold);
- The new law also regulates the **acceptance of the trade union federation as representative at unit level**.

6. Informing and consulting employees/ workers

Rules are established for informing and consulting the employees/ represented workers on the **recent evolution and probable evolution of the activities** and **the economic situation of the unit**, with a number of obligations being established for the employer, such as the fact that the employer will initiate the information and consultation process after reporting the financial statements of the company for the previous year. If the employer fails to initiate the information and consultation process, such process **will be started at the written request of the employees/ workers**. In order to allow the situation to be examined appropriately, **employers will, within a reasonable time, send the employees/ workers**, for the preparation of the consultation:

i. financial situations relevant to the preparation of the collective negotiation;

ii. detailed information on the unit's workforce, situation and social policy;

iii. other necessary information requested by trade union organisations and/ or employees' representatives, as well as by the experts who assist them.

In addition, an obligation to inform and consult is also set forth as regards **decisions likely to lead to important changes** in the organisation of work, in contractual relationships or in employment relationships, including, without limitation: situations of transfer of undertakings, acquisitions, mergers, collective redundancies, closures of production units, etc. By way of example, it is stipulated that the employer will initiate and complete the process of informing and consulting employees/ workers before implementing such decisions, in order to enable them to make proposals for the

protection of employees'/workers' rights. At the same time, it is established that if employees/ workers consider that there is **a threat to their jobs**, the information and consultation process will start **upon their written request**, within 10 days from request communication at the latest.

The new Social Dialogue Law also establishes that, in the units where no trade union organisations are constituted, the employer has the obligation to allow, **at least once a year**, the organisation of a **public information session** concerning the individual and collective rights of the employees/ workers, at the request of the trade union federations in the collective bargaining sector of the relevant unit, and the representatives of such federations will be invited to the session.

7. Employees'/ workers' elected representatives

Some of the novelties provided by Law No. 367/2022 are:

- The **conditions for the election of the employees' representatives are established.** Specifically, if an employer has **at least 10 employees/ workers** and **no union exists**, the interests of the employees / workers can be promoted and defended by their representatives, elected and mandated specifically for this purpose, according to the law;
- The employees' representatives are elected by the **vote of at least half plus one** of the total number of employees/ workers in the unit concerned;
- **Any intervention on the part of employers** and their organisations in electing the employees'/ workers' representatives or in preventing the conduct of these elections **is forbidden**;
- The employer, **at the request of the employees/ workers**, will facilitate **the carrying out of the procedures for electing the employees'/ workers' representatives**;
- At the level of the employer where there is no trade union, the employees may set up an **initiative group** that prepares the **procedures and/ or regulations for electing the employees' representatives**. In addition, the procedures and/ or regulations for conducting the elections will be communicated to the employer, who will have the **obligation to inform all employees / workers** of the unit, within 10 days of receipt at the latest, about the content of the procedures and/ or the regulations for the election of the employees' representatives;
- In order to initiate and conduct the elections of the employees' representatives, the **initiative group may seek advice from a trade union federation legally established in the respective collective bargaining sector**. If the trade union federation agrees to provide advice, its representative has access to the unit for the conduct of the process regarding the election of the employees'/ workers' representatives, in compliance with the Internal Regulations of the unit;
- **The number of the employees'/ workers' elected representatives** is established in agreement with the employer, depending on the total number of employees/workers. If the agreement is not reached, the number of the employees'/ workers' elected representatives cannot be more than (i) **2 representatives** (for employers who have less than 100 employees/

workers), (ii) **3 representatives** (for employers who have between 101 and 500 employees/ workers), (iii) **4 representatives** (for employers who have between 501 and 1,000 employees/ workers), (iv) **5 representatives** (for employers who have between 1,001 and 2,000 employees/ workers) and (v) **6 representatives** (for employers who have more than 2,000 employees/ workers);

- Employees/ workers may be **elected as the employees'/ workers' representatives** if they meet the following **conditions**: (i) they are employed with the employer under an employment contract; (ii) have reached the age of 18. Persons holding management positions who **represent the administration in dealings with the employees** or who **participate in the company management's** decisions at the level of the unit, may not be elected as representatives of the employees;

- **The duties** of the employees' representatives, **the manner in which they are performed**, as well as the **duration and limits of** their **mandate shall be recorded in the minutes of the general meeting of employees/ workers** drawn up by the initiative group and validated by the vote of at least half plus one of their total number.

8. Right to carry out activities of a political nature

The new Social Dialogue Law **eliminated** the limitation according to which trade unions and employers' organisations could not carry out activities of a political nature.

9. Collective labour disputes

The new law establishes **new situations in which labour disputes can be started**, namely:

- although the negotiation of a collective bargaining agreement has been started, the employer fails to comply with its statutory obligation to provide the trade union and/ or the employees'/ workers' representatives with information allowing an analysis of the economic and financial situation of the unit;

- the employer refuses to start negotiations in the context in which the parties have provided for clauses to be renegotiated periodically, according to the law, and the period agreed by the parties for renegotiation has expired, or in case the parties fail to reach an agreement on the renegotiation of the clauses to be renegotiated periodically;

- failure to complete the renegotiation of the clauses whose nullity has been established, after the negotiation procedures provided for by law have been exhausted;

- the employer refuses to adhere to the collective bargaining agreement/ contract at the level of the collective bargaining sector under the law, although it participated in the negotiations.

10. Strike

A new type of strike is introduced, namely the **strike against the social and economic policy of the Government**, representing the employees'/ workers' voluntary and collective cessation of work because of social or economic policies that have led to the diminution of certain rights provided for

in the collective bargaining agreements/ contracts applicable at the time those policies are adopted. Such a strike must be notified to the Government at least 10 days before the strike and the Government is bound to publish notice of the strike on its website. At least 10 days prior to the strike, the strike organiser will notify also the units and employers where the strike is to take place. The local labour inspectorates competent in the area of the units where the strike is to take place will also be notified of the start and end of the strike, at least 24 hours before the start of the strike and within 24 hours from the end of the strike, respectively.

11. Sanctions

New **sanctions** are introduced for breaching, *inter alia*, the provisions on:

- preventing the right to free organisation or association between trade unions / employers (fine from RON 30,000 to RON 50,000),
- employers' failure to comply with obligations established by law (fine from RON 15,000 to RON 20,000), concerning:
    i. the employer's obligation to invite the trade union representative at unit level to participate in the works of the board of directors or of another similar body, but only for discussing issues of professional and social interest with an impact on employees/ workers;
    ii. the obligation to start the procedure for informing and consulting employees on the recent and probable evolution of the activities and economic situation of the unit, when the employees/ workers have requested initiation of the information and consultation process;
    iii. the obligation of collective negotiation;
    iv. the obligation to stop withholding the contribution upon notification of the trade union organisation regarding the withdrawal of the member from the trade union.
- unjustified refusal to register collective bargaining agreements, with a fine from RON 5,000 to RON 10,000.

- Last but not least, under the new regulation, **violation of the prohibition to employ personnel** in order to replace the personnel on strike **is a criminal offence** (previously, failure to comply with this obligation was not punishable) and can be punishable by imprisonment from one month to one year or by a fine.

serban.paslaru@tuca.ro

mihai.anghel@tuca.ro

Editors

Employment is one of the practice areas in which our lawyers have acquired extensive experience, ranging from management schemes tailored for both entities undergoing privatisation or private entities set up by international corporations in Romania, to preparing and negotiating collective and individual labour agreements and related specific clauses (employee benefits, restrictive covenants, stock option plans and trade option plans). Our attorneys also deal with employment related matters in relation to mergers & acquisitions and privatisations, involving redundancy programs, negotiations with trade unions, pension issues raised in transactions, investment management agreements etc. Our specialists are frequent lecturers on employment law issues and regular contributors to local and foreign publications, whilst being actively involved in the activities of reputed domestic and international associations and organisations such as the European Employment Lawyers' Association (EELA), Multilaw, AmCham etc.

Șerban Pâslaru
Partner
+4 021 204 88 97
serban.paslaru@tuca.ro

Mihai Anghel
Partner
+4 0374 136 388
mihai.anghel@tuca.ro

TUCA ZBARCEA ASOCIATII

Șos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, București, România
T + 4 021 204 88 90
F + 4 021 204 88 99
E office@tuca.ro
www.tuca.ro