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# COVID-19 Legal Insights



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1. **Measures regarding the movement for professional purposes as enforced by the Military Ordinance No. 3/2020**

## The movement of persons. Movement for professional purposes

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The Military Ordinance No. 3 of 24 March 2020 on certain measures to prevent the spread of COVID-19 („Military Ordinance 3/2020”), published in the 24 March 2020 Official Gazette, establishes additional measures seeking to combat the spread of the COVID-19 virus, among which a series of limitations to the free movement of individuals.

Military Ordinance 3/2020 repeals certain provisions of the Military Ordinance No. 2/2020 of 21 March 2020 which similarly introduced certain movement limitations, but framed as obligations or recommendations, depending on the time when the movement took place.

### 1. **Limitations brought to the movement of persons**

Military Ordinance 3/2020 provides that regardless of its time, movement of persons outside their residence or home is permitted only for a number of limited, and expressly specified reasons, professional, personal or humanitarian.

More severe movement restrictions are established for persons over 65 years of age who as a rule can only move between 11 A.M. and 13 P.M. As an exception, these persons can also move for professional purposes outside this time frame.

Persons moving outside their home for professional purposes must justify their action, upon request, by a service card, a certificate issued by the employer or an affidavit.

We remind that the provisions of the Military Ordinance 3/2000 come to supplement the measures already taken by Decree 195/2020, which instituted the state of emergency on the territory of Romania and established that work should be carried out from home or by teleworking, as much as

objectively possible throughout the state of emergency, by care of the employers in both public and private sectors.<sup>1</sup>

## 2. Certificates issued by employers for movement for professional purposes

Any movement for professional purposes requires proof mainly by certificates issued by the employer confirming the professional relationship with the person and the route of the movement (e.g., home - work place).

Certificates are issued and valid only for the period or time frame necessary for the employee to work outside his home. The certificates may not be issued for periods of time lasting longer than the state of emergency.

While the Military Ordinance 3/2020 does not expressly mention reasons that may justify movement for professional purposes, these reasons transpire from the form (certificate issued by the employer) made public on 26 March 2020 by the Strategic Communication Group,<sup>2</sup> as well as from Decision No. 13 of 21 March 2020 issued by the National Committee for Special Emergency Situations (“CNSSU”), on which Military Ordinance No. 2/2020 was based.<sup>3</sup>

As per the form of the certificate issued by the employer, movement for professional purposes is allowed if *it is essential for the activity of the company and may not be performed by telework*. CNSSU Decision No. 13/2020 refers however to movement necessary where *the professional activity is essential and may not be postponed or organized remotely*.

From an interpretation of this ancillary package of documents it follows that the movement for professional purposes may be justified by the essential nature of the work which requires that a certain activity be performed outside home. For instance, a certain activity may be deemed essential where not performing it could significantly disturb the employer’s business. We will address these matters below.

## 3. Measures the employers must take in connection to the issuance of certificates for movement

Any certificate issued by the employer to justify movement for professional purposes must be based on an internal analysis of whether the work is essential, as well as, where not apparent, of whether the movement is necessary, always depending on the specificities of the work and the organizational structure of the business.

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<sup>1</sup> See *Legal Alert of 20 March 2020 - State of emergency. Impact on the labour and social protection relations, here:*

[http://www.tuca.ro/web/pdf/en/Legal\\_Alert\\_COVID\\_19\\_Protection\\_of\\_employment\\_relationships\\_within\\_the\\_state\\_of\\_emergency\\_Tuca\\_Zbarcea\\_Asociatii\\_20\\_March\\_2020.pdf](http://www.tuca.ro/web/pdf/en/Legal_Alert_COVID_19_Protection_of_employment_relationships_within_the_state_of_emergency_Tuca_Zbarcea_Asociatii_20_March_2020.pdf)

<sup>2</sup> See: <https://stirioficiale.ro/informatii/informare-de-presa-26-martie-2020-ora-12-30>

<sup>3</sup> Available at: [https://www.cnsct.ro/index.php/legislatie\\_cov/1561-hotararea-nr-13-cnssu/file](https://www.cnsct.ro/index.php/legislatie_cov/1561-hotararea-nr-13-cnssu/file)

This analysis entails an advisability study made by the employer in the given context, following certain steps such as:

- The employer must identify the areas of practice/departments that are essential for its activity and lacking which its activity would be perturbed;
- The employer must identify those activities deemed essential which may however be carried out from home or by telework, and the costs related to organizing remote work in these manners;
- The employer will further identify the employees serving in those departments deemed essential who must continue to move as their activity cannot be carried out remotely. This category may also include those employees who cannot work from a distance because that would prove too burdensome to organize, cost-wise, or impossible to implement optimally in a timely manner;
- Finally, the employer must determine the number of employees whose work is required for an adequate continuation of activities of certain departments, and must establish an adequate work schedule for them to limit the duration and frequency of their movement. For instance, it would be recommended to avoid concomitant movement for several employees that fulfil similar/connected functions.

At the same time, the employer must consider measures to protect the employees who continue to move, at the work place as well as throughout their journey (for example, measures to minimize risks that may occur *en route* to the work place).

The protection measures established by the employer will consider the latest recommendations from the authorities (e.g., regularly cleaning and disinfecting work spaces, limiting contact among people by reorganizing the work space etc.)

#### **4. Employers' liability**

Since it is the employer that determines the advisability of movement for professional purposes, it is also the employer that will bear liability for the decisions taken. Failing to abide by the measures established by the Military Ordinance 3/2020 may result in civil, contraventional and even criminal liability if proven that the employees' movement was not for essential professional purposes.

For this reason, any decision to issue a certificate of movement for professional purposes must be based on justifying documents demonstrating that the employer did carry out an internal analysis, as well as the manner in which the persons who must continue to move have been selected and what measures have been taken for their protection.

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## Editors

**COVID-19 - Legal Insights** is our response to the COVID-19 outbreak. We shall keep you informed on the various legal challenges posed by the coronavirus, thanks to a dedicated practice group comprising lawyers with different backgrounds, such as compliance/regulatory, corporate and commercial, insurance, labour and employment, litigation and arbitration, insolvency, public procurement, data privacy, tax and customs. In addition, our taskforce offers strategic advice on crisis-specific matters: corporate restructuring, review and (re)negotiation of agreements (including collective bargaining agreements and individual employment contracts), performance of the contracts which are affected by force majeure and hardship, unblocking pre-litigation relationships, etc. To be up to date with the news in these matters, you may access the resources available at the following link: <http://www.tuca.ro/covid-19/>



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