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COVID-19 Legal Insights



In this issue:

1. **Technical unemployment as regulated by Presidential Decree No. 195/2020 and subsequent enactments**

Technical unemployment in the economic and social context of the COVID-19 outbreak. Latest updates

The nationwide state of emergency, instituted by Presidential Decree No. 195/2020 (the “Decree”) due to the COVID-19 epidemic has imposed certain restrictive measures, including as regards the activity of the business operators.

In this context, one cannot ignore that, absent the authorities’ initiative and support measures for employers, the current epidemic may result in long-term grave consequences on the economic and social environment.

Towards this end, the Romanian Government adopted Emergency Ordinance No. 30/18 March 2020 amending and supplementing certain regulations and establishing certain measures in the social protection field in the context of the coronavirus SARS-CoV-2 outbreak (“GEO 30/2020”). GEO 30/2020 was published in the Official Gazette No. 231 of 21 March 2020 and it has been recently amended by Government Emergency Ordinance No. 32/26 March 2020, published in the Official Gazette No. 260 of 30 March 2020. In addition, by Orders Nos. 740-743 of the Minister of Labour and Social Security, published in the Official Gazette No. 269 of 31 March 2020, the standard forms to be applied for the implementation of certain provisions of GEO 30/2020 were also approved.

1. **The indemnity for technical unemployment in the context of the emergency state instated due to the new COVID-19**

Under the Labour Code, during the suspension of employment upon the employer’s initiative, as a result of the temporary suspension or reduction of activity (“technical unemployment”), the affected employees are entitled to receive an indemnity of minimum 75% of their base salary, paid exclusively from the employer’s salary fund.

By derogation from the above provisions, GEO 30/2020 provides that, throughout the state of emergency instituted by the Decree, the indemnities due to the employees whose employment contracts were suspended as a result of the effects of COVID-19 will be borne, at least in part, from the unemployment insurance budget.

The indemnity borne from the unemployment insurance budget is of 75% of the base salary, without however exceeding 75% of the gross average salary established for 2020 (*i.e.* thus, the indemnity borne by the budget under these circumstances shall be maximum **RON 4,071.75**).

According to GEO 30/2020, as amended, employers seem to have an option, but not the obligation, to supplement the indemnity capped as mentioned above, so as to cover the difference - if any - to the minimum 75% of the base salary corresponding to the job position, insofar as the employers' budget permits it.

Nevertheless, as regards the employers with budgets allowing supplementation of the unemployment indemnity, it is debatable to what extent they could decide *not* to supplement, since Article 53 of the Labour Code provides that the employees whose employment contracts were suspended during the reduction or temporary interruption of activity are entitled to receive an indemnity of a least 75% of the base salary corresponding to their job position.

2. Criteria to be met by the employers in order to benefit from the state support in paying the indemnity for technical unemployment

Employers shall benefit from State support in paying the indemnity within the limits described above if **they interrupt their activity, entirely or in part**, or if **they reduce their activity** as a result of the COVID-19 epidemic, throughout the declared state of emergency, based on an **affidavit**.

3. Fiscal treatment of the indemnity for technical unemployment under the provisions of GEO 30/2020

The indemnity for technical unemployment borne from the unemployment insurance budget is subject to tax and social contributions under the provisions of the Fiscal Code. Therefore, employers shall calculate, withhold and pay from this indemnity the income tax, the social insurance contribution and the health insurance contribution.

However, this indemnity is not subject to the work insurance contribution.

4. Criteria to be met by the employees

The employees with several employment contracts cannot benefit from the indemnity paid from the unemployment insurance budget if at least one of those contracts is full-time and remains active during the state of emergency.

However, the employees with several employment contracts that are all suspended because of the declared state of emergency will benefit from the indemnity corresponding to the contract with the most advantageous salary rights.

5. The procedure to be followed by employers

In order to receive the indemnities for the employees suspended under the provisions of GEO 30/2020, employers shall submit by e-mail, to the local unemployment agency (*i.e.* for each county and for Bucharest) within the area of their registered office, the following documents, based on the forms adopted by Order No. 741/2020 issued by the Minister of Labour and Social Security:

- a) Application dated and signed by the legal representative;
 - b) Affidavit;
- and
- c) The list of beneficiaries of the indemnity, undertaken by the legal representative.

The documents shall be submitted in the current month for the indemnity owed for the previous month and the payment shall be made in maximum 15 days. The employers shall, in three business days from receiving the indemnity, make the payment to the suspended employees.

6. Other categories of beneficiaries

GEO 30/2020 establishes that professionals within the meaning defined by the Civil Code (for instance, authorized individual - PFA, freelancers), as well as the individuals deriving incomes exclusively from copyright and related rights and the persons who entered into individual employment conventions based on Law 1/2005, who interrupt their activity as a result of COVID-19 during the state of emergency instituted by the Decree shall benefit from an indemnity of 75% of the average gross salary for the year 2020, *i.e.* **RON 4,071.75**.

Similarly, athletes, trainers, physicians, medical assistants, masseurs, physical therapists and researchers whose sports activity contracts have been suspended during the state of emergency instituted by the Decree, at the initiative of the sports organization, shall benefit from an indemnity of 75% of their monetary rights derived from their sports activity, within the same threshold applicable to employees (*i.e.* maximum **RON 4,071.75**). These categories can also negotiate with the sports organization the payment of other compensatory indemnities for covering their financial losses.

In these cases, the indemnities shall be borne from the state budget, and will require payment of social security contributions and health insurance contributions in compliance with the provisions of the Fiscal Code.

serban.paslaru@tuca.ro

mihai.anghel@tuca.ro

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/>



Șerban Pâslaru
Partner
+4 021 204 88 90
serban.paslaru@tuca.ro



Mihai Anghel
Managing Associate
+4 021 204 88 90
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

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