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# COVID-19 Legal Insights



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## Technical unemployment in the economic and social context of the COVID-19 outbreak

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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, Government Emergency Ordinance No. 30/18 March 2020 for amending and supplementing certain regulations and establishing certain measures in the social protection field in the context of the coronavirus SARS-CoV-2 outbreak has been passed, and published in the Official Gazette No. 231 of 21 March 2020 (“G.E.O. 30/2020”).

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, G.E.O. 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). Hence, where the case, any differences shall still be borne by the employers.

## **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 fall within one of the following categories:

- a) **They interrupt their activity, entirely or in part**, during the state of emergency based on the decisions issued by the competent public authorities, and possess the **state of emergency certificate** issued by the Ministry of Economy, Energy and Business Environment of Romania. The procedure regarding the issuance of such certificates is currently subject of a legislative proposal, to be approved by order;

or

- b) **They reduce their activity** as a result of the COVID-19 epidemic and do not possess the financial capacity to pay salaries to all their employees. In this case, employers shall benefit from the provisions of G.E.O. No. 30/2020 for maximum 75% of the employees whose employment contracts are active on 21 March 2020.

In this latter case, employers will prove their lack of financial capacity by way of an **affidavit** attesting that their proceeds for the previous month have decreased by minimum 25% compared to their average proceeds in January-February 2020 and that they do not possess the financial resources to pay all their employees. The form of such affidavit shall also be approved by order.

## **3. Fiscal treatment of the indemnity for technical unemployment under the provisions of G.E.O. No. 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. The procedure to be followed by employers**

In order to receive the indemnities for the employees suspended under the provisions of G.E.O. No. 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 annexed to the legislative act:

- a) Application dated and signed by the legal representative;

and

- b) 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 30 days.

#### 5. Other categories of beneficiaries

G.E.O. No. 30/2020 establishes that professionals who are not employers, but interrupt their activity, entirely or in part, based on the decisions of the competent public authorities during the state of emergency instituted by the Decree shall also benefit from an indemnity equal to the minimum gross base salary guaranteed for 2020 (i.e. RON 2,230, or RON 2,350 for employees hired in positions requiring higher education).

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**).

In these cases, the indemnities shall be borne from the consolidated general budget, not from the unemployment insurance budget, and shall be subject to tax under the provisions of the Fiscal Code.

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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 keep abreast of developments, please feel free to regularly check our dedicated online resource: <http://www.tuca.ro/covid-19/>



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