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Legal Bulletin



Employment Law

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Amendments to the laws on the use of electronic signature in employment relationships, work from home, telework and health and safety at work

Emergency Ordinance No. 36 of 5 May 2021 on the use of the advanced electronic signature or the qualified electronic signature, accompanied by the electronic time stamp or the qualified electronic time stamp and the qualified electronic seal of the employer in employment relationships, and for the amendment and supplementation of certain enactments (“GEO 36/2021”) was published in the Official Journal of Romania, Part I, No. 474 of 6 May 2021. It came into force on the date when it was published.

This emergency ordinance amends and supplements Law No. 53/2003 - the Labour Code (the “Labour Code”), Law No. 81/2018 on the regulation of telework (“Law No. 81/2018”) and Law No. 319/2006 on health and safety at work (“Law No. 319/2006”). The main legislative changes brought by GEO 36/2021 are presented below.

1. Use of electronic signature in employment relationships

To render employment relationships more flexible and streamlined, the Labour Code was supplemented with provisions on the employer’s and employee’s option to use, upon the execution of

the individual employment contract or the addendum to the contract, as the case may be, an advanced or a qualified electronic signature, accompanied by the electronic time stamp or the qualified electronic time stamp and employer's electronic seal¹ (the “**electronic signature**”).

The enactment introduces provisions on:

(a) Use of electronic signature

The employer may opt for using the electronic signature to prepare all the instruments/documents in the field of employment relationships resulting upon the execution of the individual employment contract, during the performance thereof or upon the termination of the contract, in accordance with the conditions provided in the internal regulation and/or the applicable collective bargaining agreement.

The employer may also use the electronic signature in its relationships with public institutions, in preparing the instruments/documents in the field of employment relationships / health and safety at work.

(b) Electronic archiving

Individual employment contracts and addenda executed by using the electronic signature shall be archived by the employer in electronic archives which shall be made available to the competent control bodies, upon their request.

(c) Written form

The written form of the instruments, an *ad validitatem* requirement upon the execution of the individual employment contract, is also deemed to have been fulfilled if the instrument is prepared in electronic form and signed with the electronic signature.

(d) The employer cannot force the employee to use the electronic signature

The employer cannot force the person selected for employment or, as the case may be, the employee to use the electronic signature upon the execution of the individual employment contract/addendum to the contract or other documents issued in the performance of the individual employment contract, as the case may be.

(e) Use of the same type of signature in the execution of documents

Upon the execution of the individual employment contract/addendum to the contract or other documents issued in the performance of the individual employment contract, as the case may be, the employer and the employee must use the same type of signature, i.e. (i) handwritten signature or (ii) electronic signature.

¹ The concepts of “*advanced electronic signature*”, “*qualified electronic signature*”, “*electronic time stamp*” or “*qualified electronic time stamp*” and “*qualified electronic seal*” have the meaning assigned to them in Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

(f) The employer may bear the expenses for the acquisition of electronic signatures

In order to comply with the legal obligations provided in GEO 36/2021, the employer may bear the expenses for the acquisition of the electronic signatures which are used to sign the instruments/documents in the field of employment relationships/health and safety at work.

2. Supplementation of provisions on work from home

GEO 36/2021 introduces the obligation of employees working from home to observe and ensure the confidentiality of information and documents which are used during the work from home.

3. Amendment and supplementation of Law No. 81/2018 on the regulation of telework

GEO 36/2021 provides for the following amendments and supplementations of telework laws:

- (a) the definition of telework was streamlined by eliminating the phrase “*at least one day per month*” from the former definition. Thus, according to the current regulation, telework is “*the form of work organization through which the employee, on a regular and voluntary basis, fulfils his duties specific to the position, occupation or profession he holds in a place other than the workplace organized by the employer, using information and communication technology*”;
- (b) as of the entry into force of GEO 36/2021, the employer may verify employee’s activity using information and communication technology, under the conditions provided in the individual employment contract, the internal regulation and/or the collective bargaining agreement, as the case may be;
- (c) the parties are no longer under the obligation to include the clause on the place(s) of telework in the individual employment contract/addendum on telework;
- (d) the provisions on employee’s obligations are supplemented in that the employee has the obligation to observe and ensure the confidentiality of the information and documents used during telework;
- (e) the employer has the obligation to ensure the conditions for the teleworker to receive sufficient and appropriate training on health and safety at work, particularly under the form of information and work instructions on the use of display equipment; the phrase “*specific to the place of telework*” was eliminated.

4. Supplementation of Law No. 319/2006 on health and safety at work

Under GEO 36/2021, the evidence of training on health and safety at work may be prepared:

- (a) in electronic form, by signing with an advanced or qualified electronic signature, accompanied by an electronic time stamp or a qualified electronic time stamp and employer’s qualified electronic seal, or
- (b) in hard copy, by using the handwritten signature.

The evidence of training is produced by reference to the method selected by the employer, as provided in the internal regulation.

The rules for the application of Law No. 319/2006 shall be amended consequently within 60 days as of the entry into force of GEO 36/2021.

Emergency Ordinance No. 37/2021 for the amendment and supplementation of Law No. 53/2003 - the Labour Code

Emergency Ordinance No. 37 of 5 May 2021 for the amendment and supplementation of Law No. 53/2003 - the Labour Code (“**GEO 37/2021**”) was published in the Official Journal of Romania, Part I, No. 474 of 6 May 2021. The enactment entered into force upon its publication.

GEO 37/2021 amends and supplements Law No. 53/2003 - the Labour Code as follows:

- (a) the duties of the job must be included in the individual employment contract, except for the job description for employees of micro-enterprises with up to nine (9) employees, for which the duties of the job can be specified orally. However, as an exception, at the written request of the employee, the employer is under the obligation to communicate in writing the job description specifying the duties of the job.
- (b) for mobile employees, employees working from home and employees of micro-enterprises with up to nine (9) employees, the employer shall keep records of the hours worked daily by each employee under the conditions established with the employees by written agreement, depending on the specific activity carried out by them.
- (c) the internal regulation shall be drawn up by the employer, except for micro-enterprises with up to nine (9) employees, in consultation with the trade union or the employees' representatives.

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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.



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