

## Overview of the Applicable Rules and Procedures Regarding the Dismissal of Employees Under Romanian Law

### 1 General Considerations

The dismissal of employees is strictly regulated under Romanian law, mainly under the Romanian Labor Code (Law No. 53/2003, as amended and supplemented) and the collective bargaining agreement applicable at the national level. Any employer seeking to initiate redundancy schemes or otherwise proceed to the layoff of certain employees, must observe mandatory rules and procedures set out in this respect.

Romanian law establishes an essential distinction between dismissal for “subjective” reasons, related to the employees (i.e., dismissal for cause) and dismissal for “objective” reasons not related to the employees (i.e., dismissal without cause), each one enjoying specific characteristics.

### 2 Dismissal for Cause

#### 2.1 Legal grounds

The employer may proceed to the dismissal of an employee on one of the following legal grounds:

- Misconduct (i.e., severe or repeated infringement of work rules and regulations)
- Preventive arrest for a period exceeding 30 days
- Physical or mental incapacity, which prevents the employee from performing the established duties in the employment agreement
- Professional noncompliance with the requirements of the position

#### 2.2 Procedural requirements

In case of dismissals for misconduct or professional noncompliance, the employer must perform certain preliminary procedures (disciplinary procedure or professional evaluation procedure). For such purposes, the employer must appoint special committees charged with the evaluation of the alleged misconduct or professional noncompliance. Throughout the evaluation procedure, the employee is provided with the opportunity to defend himself or to prove that he is professionally apt for the respective position. The physical or mental incapacity must be supported by medical documentation, evidencing that the employee is unable to perform his obligations in accordance with the employment agreement.

The employer is obliged to offer the employee declared physically or mentally incapable or professionally unfit another position within the same company, consistent with the capacity or professional knowledge of the employee, provided that such position is available within the company.

The dismissal for cause must be implemented within 30 days from the moment the employer became aware of the legal grounds justifying such decision.

### 3 Dismissal Without Cause

#### 3.1 Legal grounds

According to Romanian law, job redundancy generated by objective factors is considered the only case of dismissal without cause. The law does not provide for limitations regarding such objective reasons, which may be invoked as a basis for redundancies, but such reasons must be real/effective and well justified. The most commonly used legal grounds are the decrease of the company's business activity, the company's reorganization or economic difficulties.

#### 3.2 Collective dismissals

Under Romanian law, a "collective dismissal" is considered the dismissal without cause, within a, 30, calendar day period, of:

- At least ten employees, if the employer has more than 20, but less than 100 employees
- At least ten percent of the number of employees, if the employer has at least 100, but less than 300 employees
- At least 30 employees, if the employer has at least 300 employees

The employer can proceed with a collective dismissal only provided that certain legal obligations are observed:

##### *a) Consultations with the labor unions or the representatives of the employees*

The employer has the obligation to initiate consultations in order to reach an agreement with the labor unions or the employees' representatives with respect to: (i) the methods and means that can be implemented in order to avoid collective dismissals or to reduce the number of employees affected by the dismissal; and (ii) the social protection measures aiming at the limitation of the negative effects of the dismissal, such as professional qualification or reconversion of the dismissed employees. Such consultations must be initiated within 15 to 30 days prior to issuing any decision to proceed to the collective dismissals, depending on the number of employees in the company.

##### *b) Information and notifications*

For the purpose of enabling the assessment of the economical situation of the company and the submission of proposals regarding the avoidance or the limitation of the effects of the collective dismissals, the employer must provide the labor unions or the employees' representatives with relevant data and information, in writing, including the number and categories of employees affected by the collective dismissal; the technical and economical justification of the collective dismissal; measures considered by the employer to limit the number of dismissed employees and/or the consequences of the collective dismissal; the social protection measures envisaged by the employer (e.g., severance payments, etc.) and a timetable for the envisaged dismissals.

The information made available to the labor unions or the employees' representatives above must be also communicated simultaneously to the territorial labor authorities.

If the negotiations with the labor unions do reach a conclusion and the collective dismissals cannot be avoided, the employer must issue a second notification announcing the decision to continue with the redundancy schemes, which is to be communicated to the local labor authorities and the labor unions within thirty (30) days prior to the moment when the dismissals become effective.

### 3.3 Selection criteria and restrictions on dismissals

The Romanian regulations provide for certain criteria, which the employer must observe when proceeding to dismissals of employees without cause. Thus, the positions within the organizational chart of the company must be made redundant following a certain order: unoccupied positions; persons occupying two or more positions or cumulating the salary with a retirement pension; persons meeting the legal conditions for retirement or who may retire at their request. The dismissal should include only as a last resort the employees who are sole income providers for their families, single mothers or fathers with childcare duties or employees with less than three years until retirement.

However, the dismissal of employees is prohibited if based on criteria such as gender, sexual orientation, age, national origin, race, color of the skin, ethnic origin, religion, political options, social origin, disability, family status or labor union membership or activity, as well as for reasons related the exercise of labor-union related rights and activities, including the right to go on strike. In addition, with the exception of bankruptcy or judicial reorganization of the employer, employees cannot be dismissed when in certain special circumstances, such as pregnancy, maternity leave or childcare leave, conscription or military service, legal leave or appointment in a labor union-related position.

## 4 Dismissal Decision and Notice Period

The dismissal becomes effective only subject to the communication in writing to the employee of the individual dismissal decision, which must include, among others, the legal and factual justification for the dismissal. The employee may challenge the dismissal decision before a competent court (Romanian: “*Tribunal*”) within 30 days of receipt of the communication.

In case of dismissal without cause, as well as in the case of dismissal for professional noncompliance (except for employees in trial periods) or physical or mental incapacity, the employees benefit from a 20 business-day notice period.

## 5 Severance Payments

Employees, whose positions are made redundant without cause, are entitled to a severance payment. The minimum severance payment under Romanian law is provided by the national collective bargaining agreement being equal to one monthly salary of the dismissed employee.

Additional compensation may be paid in accordance with applicable collective bargaining agreements at the industry or company level, as well as with the internal regulation of the employer or the individual employment agreements.

## 6 Conclusion

Romanian law provides various options allowing an employer to restructure the workforce according to its specific needs and economic conditions. However, dismissals must be performed in strict compliance with the rules laid down by the mandatory Romanian regulations; otherwise the employer may incur the risk that such dismissals will be reversed and compensation will be paid to the unfairly dismissed employees.

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