

Minimum wage raised by law.

Besides, certain employers might have to raise salaries voluntarily

by Christian Weident

It is almost a tradition that every year, the Romanian minimum wage is raised by Government Decision. In view of the raise for 2019, the Government issued two legal acts having effects on several levels.

Independent from the minimum wage increase, companies which are active in certain areas, including IT and R&D, might be forced to raise salaries – however, not because of a new law, but as an effect of a legal act which has not been adopted.

Minimum wage increase

In view of the minimum wage increase, the Government has firstly modified the Labour Code per Emergency Ordinance¹ (“GEO”). As an effect, the minimum wage may be determined, by Government Decision, on several levels, depending on the education and the length of service.

This left unclear which increase should be decided when and for which categories of employees².

On 07.December 2019, the Government issued its Decision³ providing the following:

- Beginning with 01.01.2019, the legal minimum base salary (excluding allowances and other benefits) amounts to **2.080,00 RON (ca. 445,00 EUR) gross**, and thus 9,47% more than in December 2018.
- By way of exception, the aforementioned minimum base salary of an employee is raised to **2.350,00 RON (ca. 500,00 EUR) gross**, i.e. 23,6% more, if higher education is foreseen for the function of such employee and he has at least one year length in service “in the field of the higher education”.

All companies concerned must raise the minimum salary accordingly with effect from 01.01.2019. This implies a modification of the employment agreements and a timely registration with the employee's register Revisal.

Important notes

Obviously, the Government has decided not to introduce the minimum wage of 2.350,00 RON for all employees with a length of service of at least 15 years (regardless of the work place and the type of activity). However, it can still decide on this matter.

It has though ruled that whenever the law makes reference to the legal minimum wage for the determination of rights and obligations, the general minimum wage (2.080,00 RON) will be the basis.

The unclear wording of the GEO makes interpretation necessary. There are opinions according to which an employee with higher education will be entitled to the higher minimum wage only if he

¹ Emergency Ordinance (*Ordonanta de Urgenta*) no. 96/ 09.11.2018

² In October, the Government had announced minimum wage increases already as at 01.11.2018, but afterwards cancelled this plan. Moreover, the first draft provided a minimum wage amounting to 2.350,00 RON for all employees with a length of service of at least 15 years.

³ Government Decision (*Hotărâre de Guvern*) no. 937/2018

- Absolved exactly the higher education which is foreseen for the function he has;
- Has been active at least one year in the field which he actually studied; etc.

Situation for tax- exempted employees

Independent from the minimum wage, other employers may find themselves obliged *de facto* to raise salaries due to the non- regulation of an aspect.

This concerns companies which employ persons who are exempted from income tax, i.e. especially in the fields of IT/ software development, as well as research and development.

As already reported, in November 2017, the Government had adopted a GEO⁴ which governed the transfer of almost all employer social security contributions to the employee's liability with effect from 1. January 2018. This caused a considerable decrease of the net salary of all employees. To keep net remuneration unchanged in 2018, all gross salaries had to be increased from January. As a cushion against the employer's financial disadvantages, the income tax has been reduced to 10%.

However, this salary increase was *not* cost-neutral for employers when granted to employees who are exempted from income tax. In order to correct this, another GEO⁵ provided that in certain cases, a certain amount of the respective employees' health insurance contribution was borne by the state budget. We have already reported on the considerable problems related to this GEO.

This GEO explicitly applies only in 2018 and has expired on 31.12.2018. As a new provision in this respect has not been adopted so far, the affected companies face a *de facto* obligation to raise the salaries (this time with higher total costs).

Conclusion, comments

By an Emergency Ordinance, the Government has granted itself the right to raise the minimum salary dependent on education and length of service of the employees. According to the justification of the act, the salary increase will have positive effects on the economic growth, as it promotes employment, increases the buying power of the employees and reduces illegal work. As per the justification, there are no effects on the business environment.

All affected employers are compelled by law to raise salaries on time.

Employers of tax- exempt employees are in a different situation: they might be forced to increase salaries as an effect of a regulation which has not been adopted.

Contact and further information:



STALFORT Legal. Tax. Audit.

Bucharest – Bistrița – Sibiu

Office Bucharest:

T.: +40 – 21 – 301 03 53

F: +40 – 21 – 315 78 36

M: bukarest@stalfort.ro

www.stalfort.ro

⁴ GEO no. 79/2018. Please note that a law confirming or modifying this GEO has still not been adopted; the draft has been in the Chamber of Deputies since practically one year.

⁵ GEO no. 3/2018