

More drastic sanctions for infringements of overtime regulations are expected

By Vlad-Teodor Bratu

On 18th September, a draft amendment to the Romanian Labour Law was approved by the Chamber of Deputies. Its only purpose is to introduce much more drastic sanctions for any employer in Romania not observing the regulations on overtime. For the law to come into force, it has to be approved by the President and published in the Romanian Official Gazette.

New regulations

According to the Labour Law in its current form, an employer runs the risk of being fined between 1,500-3,000 RON if the Romanian Labour Authorities identify irregularities related to overtime. This applies regardless of the number of employees concerned¹.

According to the new draft law, the liability will be tightened: the fine will be calculated for each and every employee subjected to such infringement. If the authorities identify, for example, infringements of overtime worked by 10 employees, their employer will pay a fine, according to the new rules, of between 15,000 and 30,000 RON.

Important matters regarding overtime

Overtime represents the working hours performed beyond the usual working schedule².

- According to the Labour Law³, working overtime is only allowed with the consent of the employee.
- The employee cannot refuse working overtime if the overtime is required as a result of emergency situations, for example a Force Majeure event or urgent works for the prevention of accidents.
- Certain employees, for example part-time employees or underage persons, may not work overtime.
- Overtime work must be, in principle, compensated by paid free time within 60 calendar days. If such compensation is not possible within this period, the employer must also pay a bonus of at least 75% of the base salary for the overtime worked, in addition to the applicable compensation.
- One should take into account that the weekly working hours including overtime must not exceed 48 hours, according to the Labour Law⁴. However, some exceptions from this rule, (for example during peak times) are allowed if the working hours do not exceed, on average, 48 hours a week during a reference a period of 4 months.

¹ Art. 260 paragraph (1) lit. in the version still valid so far.

² 40 hours a week

³ Art. 120 and Art. 121

⁴ Art. 114

On the draft law

The legislative change now approved was rejected by the Romanian senate⁵ in mid-2018. In the Chamber of Deputies it was, however, accepted and submitted to the President on 28.09.2019 for approval. Its enforcement is probably only a matter of time.

The initiators explain the need for their draft law as a necessity to adapt the sanctions for the volume of overtime worked irregularly. According to a study carried out, Romanian employees work 23% more overtime than the European average⁶. A constantly high work load leads, according to this study, to health, family or productivity problems.

The amount of the fines imposed up to now was not high enough to make employers refrain from implementing abusive overtime work, from an economic point of view, the fine being more profitable for companies than the overtime compensation. This has led to numerous cases of overtime rules violation on the Romanian labour market.

The European Context

On the European level there is news that must be taken into account in the context of the proposed legislative changes. On the one hand, the European Court of Justice decided in May 2019⁷ that member states must force employers to implement time recording systems to determine maximum working hours, minimum rest periods, and overtime. On the other hand, a directive⁸ on transparent and foreseeable working conditions was adopted and must be implemented before 2022.

This document is a significant move towards consolidating the protection of employees.

Conclusion

The introduction of more drastic fines for infringement of overtime regulation fulfils its deterrent purpose, without a doubt. Romanian employers should take more caution concerning overtime in the future.

More thorough inspections and more drastic sanctions are to be expected in Romania and across Europe.

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⁵ This took place on 20.06.2018.

⁶ Study for 2016 of the „European Working Conditions Survey“.

⁷ Case C-55/18

⁸ Directive (EU) 2019/1152