

Practical issues regarding the decreeing of State of emergency in Romania, determined by the spread of the SARS-CoV-2 coronavirus

- I. General considerations
- II. The effects on labour contracts
- III. The effects on road freight contracts
- IV. The effects on real estate rental contracts



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I. General considerations

- ❖ The Presidential Decree on the state of emergency situation was published in the Official Gazette of Romania on 16.03.2020.
- ❖ The emergency state shall last for a term of 30 days, which shall end on April 15th.

| T1- 26.02.2020 | T2- 16.03.2020 | T3- 15.04.2020 | T4- 01.06.2020 |
|---|--|---|---|
| Start of the quarantine measures (Order Health Ministry no. 313- Institution of quarantine measures COVID 19) | Start of the state of emergency (Decree no. 195/2020 regarding the institution of state of emergency throughout Romania) | End of the state of emergency, resumption of the activities prohibited by the Decree. | Reduction of the quarantine cases and resumption of work by the a large number of employees at their usual work location. |

II. Legal solutions regarding the labour agreements

- ❖ **1. Alternative measures** for continuance of the employers object of activity and payment of salaries.
 - For example:
 - **Work from home – tele work,**
 - **transforms lines** of production into fabricating products that have high request in the present situation – selling merchandise/ providing service on-line
 - Necessary documents:
 - **Employers decision** for unilateral decision to modify the place of work/ telework/ change of the job description/ in case of modification of the line of fabrication/ on-line sales, art. 33 Decree, art. 48 Labor L.

II. Legal solutions regarding the labour agreements

- ❖ **2. Days-Off for parents**, Law no. 19/14.03.2020, with payment of the financial compensation for each day off, **conditions are provided by GD 217/21.03.2020**

- Necessary documents:
 - Written request submitted by the employee
 - Financial compensation is paid by the employer and the amount due is calculated as follows: 75% from the income correspondent of a working day, but no more than 75% from 5.429 RON, sums that are reimbursed from the Guarantee Fund for the payment of wage receivables.
 - The number of free days off is established by Government Decision.

II. Legal solutions regarding the labour agreements

❖ 3. Quarantine, suspension of the labor agreement – medical leave payment.

➤ Necessary documents:

- If the employee is being quarantined by the authorities, he/she has to inform the employer by any communication ways;
- During quarantine it is not necessary to present any justifying document to the employer.
- Medical certificate presented by the employee (issued retroactive),
- After the quarantine period has ceased, the employer issues a Decision (retroactive) where it is mentioned the period the contract was suspended, art. 50 letter c) L.L., and art. 33 from the Decree.
- The financial compensation is paid by the employer, the amounts paid shall be **reimbursed** by the employer from the state budget.

II. Legal solutions regarding the labour agreements

- ❖ **4. Force majeure – suspension labor contract without payment.**
- Necessary documents: **Decision** issued by employer, art. 50 lit f) L.L..
 - the employee is not entitled to receive a financial compensation, in accordance with article 49 paragraph (2) from the Labor Law, stating that it is suspended the obligation to provide work from the employee and the obligation of payment of the salary rights by the employer.
 - The suspension of the employment agreement can be applied even after the expiration of the quarantine period, if the force majeure is maintained for a longer period of time than the quarantine period.
 - It is possible that the employee may be interested, to opt for the termination of the employment agreement from the initiative of the employer (i.e. dismissal), in order to receive unemployment benefits from the state - Law no. 76/2002 .

II. Legal solutions regarding the labour agreements

- ❖ 5. **Suspension** of the labor agreement from the employer's initiative.
- ❖ 5.1. technical unemployment BEFORE the Government Emergency Ordinance **no. 30/21.03.2020 was published**
- **Technical unemployment** can be imposed (economic/technological reasons, etc.) – article 52 par. (1) from L.L.
- Necessary documents:

It is issued a Decision for suspending the labor agreement by the employer – article 52 and 53 L.L – for a 30 days period, with the payment of a financial compensation, payed from the salaries budget of the employer, that cannot be lower than 75% from the gross salary for the position hold in the company.

II. Legal solutions regarding the labour agreements

- ❖ 5. **Suspension** of the labor agreement from the employer's initiative.

- ❖ 5.2. technical unemployment AFTER the Government Emergency Ordinance **no. 30/21.03.2020 was published**
- **Technical unemployment** can be imposed (economic/technological reasons, etc.) – article 52 par. (1) from L.L.
- Necessary documents:
 - Technical unemployment compensation **it is paid by the employer**,
 - During the emergency state established by Decree no. 195/2020,
 - The financial compensation is established at **75% from the gross salary** correspondent to the work position held, and are borne by the unemployment insurance budget, but not more than **75%** of the gross average wage, established at **5.429 RON**.

II. Legal solutions regarding the labour agreements

- ❖ The difference is made by the object of activity of the employers:
 - a) Directly affected, employers that **stop** the commercial activity totally and partially (for example, M.O. no. 1/ 2020, the case of *Horeca*) and hold the **Certificate** for emergency situations issued by M.E.E.M.A., all the employees that are in this situation can receive financial compensation for technical unemployment, and
 - b) Indirectly affected, employers that **reduce** the commercial activity because of the **effect** of COVID-19 and do not have the financial capacity to pay all their employees salaries. **The employers** can benefit from the payment of the financial compensation for only 75% from the employees that have active work agreements at the date the G.E.O no. 30/2020 enters into force, based on a **Statement** that the employer has recorded a decrease of the previous month's incomes/collections with a percentage of at least 25% compared to the average of the January-February 2020.
- ❖ The financial compensation is subject to taxation and payment of mandatory social contributions, but is not subject to insurance contribution for work, that is of 2.25% (art. 220 ind 3 Fiscal Law).

II. Legal solutions regarding the labour agreements

- ❖ **6. Suppression of the position and termination of the labor agreements, with payment of the notice period (for example, 20 working days).**

- Necessary documents:
 - **Employers decision of suppression of the position – organizational chart.**
 - **Dismissal decision** for suppression of work position, according with article 65 L.L.
 - It is necessary that the conditions for collective dismissals to be followed, where is the case (only for private entities)

III. The effects on road freight contracts

- ❖ Important measures imposed by the EU that affect the transport sector:
 - Starting with the 18th of March, for a 30 days period the EU borders have closed, leaving only a transport corridor for essential goods.
 - The travel restrictions at the border are temporary and aim to reduce most non-essential travel from other countries into the European Union. The new rules will apply to all 27 members of the EU, plus Iceland, Liechtenstein, Norway and Switzerland. The travel ban will affect all non-EU nationals from visiting the bloc, except long-term residents, family members of EU nationals and diplomats, cross-border and healthcare workers, and people transporting goods.

III. The effects on road freight contracts

- ❖ Conditions imposed by the Decree no. 1/2020 regarding the emergency situation and by the latest GEO or GO for the transport sector:
 - Drivers must have protection materials at their disposal at all time according to art. 4 as amended: Drivers of freight vehicles with a maximum authorized capacity greater than 2,4 t have the obligation, at the border crossing point, to have on them and to wear individual means of protection, such as disinfectant, gloves, face mask , as well as to present documents attesting the route to the destination.
 - Drivers of vehicles provided in par. (1), who arrive from "red areas" or "yellow areas" or have passed through these areas, are not subjected to quarantine or isolation measures, if at the border crossing point they do not show COVID-19 associated symptoms.

III. The effects on road freight contracts

- The transport of medical devices and sanitary materials that ensure the prevention and treatment of COVID-19 associated diseases, as well as of the certain drugs, for distribution outside the territory of Romania, is prohibited – article 5 from the Decree.
- All flights performed by airline operators to Spain and from Spain to Romania shall be suspended for all airports in Romania for a period of 14 days (from 18th of March).
- The measure of suspension of flights performed by airline operators to Italy and from Italy to Romania is extended for a period of 14 days, starting with 23rd of March 2020.

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III. The effects on road freight contracts

❖ New measures imposed by the authorities that affect the transport sector:

- By Military Ordinance no. 2/2020 it was imposed that starting with 22th of March 2020, hour 22:00, it is forbidden to enter the territory of Romania, through the crossing points of the state border, of foreign citizens and stateless persons, as defined in art. 2 lit. a) and b) of the Government Emergency Ordinance no. 194/2002 regarding the regime of foreigners in Romania, republished, except when they transit the territory of Romania by transit corridor organized by agreements with the neighbour-states.

IV. The effects on real estate rental contracts

❖ Solutions for the LESSEE:

According with G.E.O. no. 30/21.03.2020, regarding the lease agreements:

- During the emergency state period (16.03 – 15.04.2020) **only SMEs** that totally or partially interrupted their activity based on the public authorities decision (for example, for the *Horeca* industry Military Ordinance no. 1/2020), and have an emergency situation certificate, benefit from the **postponement** of pay for the **utilities** – electricity, gas, water, phone and internet services, as well as the postponement of payment of rent for the constructions where their headquarters and secondary working stations are located.

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IV. The effects on real estate rental contracts

- It is presumed to constitute a case of **force majeure**, the unpredictable, absolutely invincible and inevitable circumstance referred to in art. 1351 par. (2) of the Civil Code, which results from an action of the authorities in the application of the measures imposed by the prevention and control of the pandemic that affected the activity of SMEs, and proven with the emergency situation certificate.
- ❖ For the situations when the force majeure cannot be proven through the emergency situation certificate issued by the Ministry, legal entities can invoke the **unforeseeable** case for the reduction of rent, or termination of the agreement, if the parties agree. If the parties do not agree, only the courts of law can decide.

IV. The effects on real estate rental contracts

- ❖ Possible solutions for the OWNER / LESSOR(Civil Code)
 - If the Lease contract is authenticated or is registered with the tax authorities, it may constitute an enforceable title, and the party could enforce the value of the rent due, which after the date of 16.04.2020.
 - Can invoke force majeure or the unforeseeable case for the reduction of debts in relation to its suppliers, creditors (for example banks).
 - May request the termination of the contract as an exception for non-performance of the contract, after the date of 16.04.2020, and if the rent is due.



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❖ Conclusions

- ❖ The choice of one of the presented solutions must be carefully analysed on a case-by-case basis, verifying the factual aspects and the applicable contractual and legal provisions.
- ❖ Also, the contracting parties must act in good faith in accordance with the principle provided in art. 1170 Civil Code and equity according to art. 1272 Civil Code.

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Doreen Virtue

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