

Employment: International

Country snapshot

Key considerations

Which issues would you most highlight to someone new to your country?

Romania

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Romanian labour legislation is primarily designed to protect the rights of the employees, in line with EU law. To this end, it provides a set of minimum mandatory standards governing employment relationships. This employee-friendly approach can also be seen, to a large extent, in court practice.

Romanian labour relationships are quite formal. All of the minimum standards and procedures set out by law must be strictly observed; if they are not, the courts may invalidate them, the labour inspectors may fine the employer and employees may be entitled to damages for any prejudices incurred.

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What do you consider unique to those doing business in your country?

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Romanian labour legislation has many grey areas and certain provisions on labour-related topics conflict. Moreover, although the unions are quite active, there are no national or industry-level collective bargaining agreements. Thus, in many cases the legal regime and procedures to be carried out are unclear. As a result, court practice and interpretations by labour inspectors play a significant role in the assessment of the applicable rules and procedures.

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Is there any general advice you would give in the employment area?

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The Romanian authorities are keen to ensure compliance with the labour rules; thus, employers are advised to adhere to them strictly. Employers should establish close communication with the relevant labour inspectors, as this may prove useful in understanding the authorities' view on labour legislation.

In addition, employers should always seek to draft comprehensive, detailed and well-structured internal regulations, which may prove useful in both covering certain grey areas of legislation and properly conducting certain procedures, including disciplinary procedures, lay-offs, employee evaluations and bonuses. The importance of internal regulations cannot be overestimated given that they are issued unilaterally by the employer (employee approval is not required) and are legally binding on the employees.

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Emerging issues/hot topics/proposals for reform

Are there any noteworthy proposals for reform in your jurisdiction?

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No comprehensive reforms are foreseeable in the near future. However, amendments and improvements to specific sections of the labour legislation are debated occasionally.

Most recently, the Ministry of Labour initiated two bills to:

- regulate internship agreements (governing the relationship between employers and interns) – since Romanian law lacks regulation in this respect, the new law is expected to cover a major hole in the existing legislative framework; and
- modify the Labour Code by:
 - extending the definition of ‘labour performed without proper registration’;
 - imposing an obligation to register any changes to an employment agreement before implementation (rather than within 20 days of signing the addendum to the agreement, as is presently the case); and
 - requiring employers to document the daily working hours of each employee (including the hours of commencing and finishing work) and to present such information to the labour authorities on request.

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What are the emerging trends in employment law in your jurisdiction?**Maravela & Asociații**

Electronic communication is gaining importance in labour procedures; the Supreme Court recently recognised that dismissals can be notified via email provided that certain conditions are met.

In addition, the courts have begun to take a more balanced approach towards employers (as opposed to the general status quo whereby employees are favoured).

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The employment relationship

Country specific laws

What laws and regulations govern the employment relationship?**Maravela & Asociații**

The employment relationship is governed by:

- individual employment agreements;
- collective bargaining agreements;
- the Labour Code;
- other national laws and secondary enactments;
- EU law; and
- international labour-related treaties to which Romania is a party.

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Who do these cover, including categories of worker?**Maravela & Asociații**

Except for certain categories of worker that are regulated separately and are not subject to employment laws (eg, liberal professions, public servants, managers of joint stock companies and sole person enterprises), the employer-worker relationship is governed by labour law if the work is rendered by the worker under the authority and for the benefit of the employer in return for a wage.

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Are there specific rules regarding employee/contractor classification?

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Pursuant to labour law, an ‘employee’ is a person who performs work against consideration under the authority of an employer. Thus, the employee is subordinated to the employer and follows the working conditions imposed by the employer (ie, the allocated tasks, the place of work and the working schedule – collectively known as ‘dependent activity’). In addition to this general criteria, when establishing the employment nature of a contractual relationship, the courts consider the ownership of any equipment used when performing specific activities, as well as the existence of any additional expenses paid by one party for the benefit of the other (eg, travel expenses, secondment expenses and holiday stipends).

Contractors, on the other hand, maintain a high degree of freedom regarding their working schedule, workplace and clients, but assume the risks inherent to their activities (known as ‘independent activity’).

According to the Fiscal Code, a contractor’s activity is considered independent if four of the following seven criteria are met:

- freedom to choose the working hours and workplace;
- freedom to collaborate with different clients;
- exclusive performance risk;
- freedom to use the clients’ equipment;
- independent use of physical and intellectual capacities;
- adhesion to a freelancer category of contractor; and
- freedom to perform activities directly or through further employees.

Therefore, the distinction between dependent and independent activities is also important from the perspective of tax contributions. While taxes related to salary for dependent activities (ie, social security contributions and mandatory medical insurance) are paid by the employer, in case of independent activities, the employee must pay such taxes.

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Must an employment contract be in writing?

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According to the Labour Code, an employment contract must be in writing in order to be valid. The obligation to ensure that the contract is concluded in writing rests on the employer.

However, the Supreme Court recently ruled that where an employment agreement was not concluded in writing, the employee can still obtain a court judgment acknowledging the existence of the employment relationship and its legal effects. Such ruling can be obtained even if the employment relationship is terminated at the time when it is requested.

Thus, the employment agreement may not be deemed void if the employee has an interest in relying on it. It remains to be seen whether the Romanian courts will consider that the lack of a written contract does not make the contract void if the employee has an interest in claiming that the contract is void on this ground.

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Are any terms implied into employment contracts?

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The law provides a minimum set of rights for employees and other conditions that cannot be excluded or diminished by the will of the parties. Such rights and conditions may thus be deemed as terms implied into employment contracts.

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Are mandatory arbitration/dispute resolution agreements enforceable?

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Under Romanian law, mandatory arbitration and dispute resolution agreements are not permitted and are unenforceable with respect to individual labour disputes. This is because the Labour Code expressly provides that the courts should resolve disputes, and that any agreement aimed at the waiver or limitation of an employee's rights as set out by the law is void.

Potential collective labour disputes are as follows:

- the employer refuses to execute a collective bargaining agreement;
- no such agreement is in place or has expired;
- the employer refuses to accept the demands of employees; or
- the parties to the collective bargaining agreement fail to conclude the agreement by the date set out by the signatories.

These disputes may be subject to a form of arbitration expressly regulated by law – namely, that carried out by the Office for Mediation and Arbitration of Collective Labour Disputes affiliated to the Ministry of Labour. However, to date this institution has not been established.

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How can employers make changes to existing employment agreements?

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As a matter of principle, the employment contract can be amended only with the consent of both parties through written addenda. However, the law provides two situations where the employer can unilaterally amend the employment agreement: relocation; and secondment.

However, these measures can be adopted only under certain conditions, and they can be prolonged only with the employee's consent.

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Foreign workers

Is a distinction drawn between local and foreign workers?

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In accordance with EU rules and national laws, foreign workers benefit from the same level of protection as local workers. Nevertheless, citizens of non-EU member states must obtain work permits, and in principle also require the appropriate visa if their presence in Romania is required for the purposes of employment.

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Recruitment

Advertising

What are the requirements relating to advertising positions?

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Employers must notify local employment agencies of vacant jobs within five days of jobs being created or becoming vacant. This notification should be provided in the form provided by the law and should include, among other elements, the position, the corresponding Romanian occupations classification number and the number of vacant roles.

In addition to these formal requirements, all job advertisements must comply with the anti-discrimination laws. It is prohibited to:

- condition the participation of a person in an economic activity based on race, nationality, ethnic affiliation, social category, beliefs, gender, sexual orientation, age or background; or
- refuse to hire a person as an employee based on the same reasons.

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Background checks

What can employers do with regard to background checks and inquiries in relation to the following:

(a) Criminal records?

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According to Article 10 of Law 677/2001 on the protection of individuals regarding personal data processing (which transposes Directive 95/46/EC), the processing of personal data regarding criminal convictions may be made only by or under the supervision of the relevant public authorities within the powers granted to them by law.

By law, criminal conviction registers may be held only by the relevant authority within the Ministry of Interior and can be accessed only by the concerned person or, under certain conditions, by other public authorities.

Accordingly, employers may not access the criminal conviction registers. However, they should be entitled to request that the relevant employee or candidate provide an excerpt of his or her criminal record if the employer has a legitimate interest in checking that there is no criminal penalty forbidding an employee from holding the relevant position.

Processing such information should be made in full compliance with data privacy requirements. For instance, except where expressly required by law (eg, there is a legal obligation for certain categories of employee to present a criminal record before engaging in an employment relationship), the processing should be notified to the data privacy authority, which must carry out an inspection.

Under Law 677/2001, employers cannot carry out any other type of processing pertaining to criminal convictions unless the relevant data:

- is manifestly made public by the concerned person; or
- is closely connected to the official status of the concerned person or the public nature of the acts.

(b) Medical history?

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A medical document attesting the employee's capacity to perform work must be presented before engaging in an employment relationship. However, such document does not contain a detailed medical history and grants the employer no right to further investigate the potential employee's medical condition. No other legal provisions allow such further investigations.

Nonetheless, with the employee's consent the employer may be given access to his or her medical history.

All medical data should be processed in accordance with data privacy legislation. For instance, unless the processing is required by law (eg, as in the case of the medical document presented on commencement of employment or as required to observe health and safety obligations), the data must be notified to the data privacy authority for inspection.

(c) Drug screening?

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Romanian labour law makes no reference to drug screening. However, this may be deemed to be medical data and processed accordingly (see above).

(d) Credit checks?

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Romanian labour law makes no reference to credit checks. However, since credit information amounts to personal data and since it could be claimed that the employer has a legitimate interest in performing such check, the processing of credit-related data could most likely be done only with the employee's consent.

In addition, the processing of credit-related information should observe all other relevant requirements under data privacy legislation.

(e) Immigration status?

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Romanian labour law makes no reference to credit checks. However, since credit information amounts to personal data and since it could be claimed that the employer has a legitimate interest in performing such check, the processing of credit-related data could most likely be done only with the employee's consent.

In addition, the processing of credit-related information should observe all other relevant requirements under data privacy legislation.

(f) Social media?

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Romanian labour law makes no reference to social media screening. However, where social media information can be deemed as lawfully obtained from publicly available sources, an employer could, in principle, process this without the employee's consent provided that private data protection legislation is observed. For certain categories of data, additional conditions (eg, that the data subject made public the information himself or herself) may have to be fulfilled.

(g) Other?

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Romanian labour law makes no reference to other types of screening. However, where the screening information can be deemed as lawfully obtained from publicly available sources, an employer could, in principle, process this without the employee's consent provided that private data protection legislation is observed. For certain categories of data, additional conditions (eg, that the data subject made public the information himself or herself) may have to be fulfilled.

Wages and working time

Pay

Is there a national minimum wage and, if so, what is it?

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As of 2017, the national minimum gross wage per month is Lei1,450 approximately (€318). An employment contract providing less than the national minimum wage is deemed to be an administrative offence to be punished by a fine from the relevant government job agency.

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Are there restrictions on working hours?

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The normal working hours are eight hours a day and 40 hours a week.

Working hours are usually allocated in sets of five days of eight working hours, with two days for rest during the weekend. However, different working hours can be adopted provided that:

- the normal duration of working hours is observed;
- work on bank holidays and weekends is additionally remunerated; and
- there are always two consecutive days of rest within a week.

For employees younger than 18, the normal working hours are six hours a day and 30 hours a week.

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Hours and overtime

What are the requirements for meal and rest breaks?

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If the daily working hours exceed six hours, the employee is entitled to a meal break and other breaks, in accordance with the collective bargaining agreement and the employer's internal regulations. Employees younger than 18 must always have a meal break of at least 30 minutes if the daily work duration exceeds four-and-a-half hours.

Employees are also entitled to a rest break of at least 12 consecutive hours between two working days. However, in the case of shift work, the break between shifts may not be less than eight hours.

Other rest breaks during the day are not expressly regulated but may be detailed in the employer's internal regulations.

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How should overtime be calculated?

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Any work carried out outside the normal duration of the weekly working time is considered to be overtime. However, overtime may not be carried out without the employee's consent, except in cases of *force majeure* or urgent work aimed at preventing an accident or mitigating the consequences of an accident.

However, including overtime, the maximum duration of the working time may not normally exceed 48 hours a week.

The duration of the working time including overtime may at times exceed 48 hours a week, provided that the average of the working hours calculated over a four-month period does not exceed 48 hours a week.

Collective bargaining agreements may contain a larger reference period of up to six months for certain activities or professions.

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What exemptions are there from overtime?

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Overtime is forbidden for:

- part-time employment agreements; and
- employees younger than 18 years.

Is there a minimum paid holiday entitlement?

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The Labour Code provides that employees are entitled to at least 20 working days. Bank holidays are not included in this.

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What are the rules applicable to final pay and deductions from wages?

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In addition to disciplinary penalties, the law allows two types of deduction from wages:

- the deduction of taxes and contributions from the gross income; and
- specific expenses relating to health and private pension contributions of up to €400 a year.

Apart from deductions expressly set out by the law, employers cannot make any other deductions or reduce wages other than in accordance with disciplinary procedures.

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Record keeping

What payroll and payment records must be maintained?

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The following payroll and payment records must be maintained:

- the wages payroll;
- the D112 Statement relating to the payment obligations, social contributions, income tax and nominal evidence of the employees; and
- the proof of wage payment

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Discrimination, harassment & family leave

Family and medical leave

What is the position in relation to family and medical leave?

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Paid medical leave is to be granted in case of temporary incapacity to perform work due to illness or to a non-work-related accident. The total duration of such leave is up to 183 days a year, although this can be exceeded for certain illnesses.

Female employees benefit from 126 days of fully paid maternity leave. This leave may be granted both before and after birth. However, at least 42 days of maternity leave must be taken after giving birth. Male employees are entitled to five days' leave within eight weeks of the birth of the child.

Employees with a disabled child who have worked for at least 12 months during the 24 months before the birth of a child may be granted child-rearing leave for up to two years (male employees) or three years (female employees). Such

leave may be granted only to one of the parents.

In addition, employees with children are entitled to one paid day of leave a year to take children to the doctor if they have one or two children, and two paid days of leave a year if they have three or more children. This leave is granted to only one of the parents.

The amount of the pay for these types of leave may be lower than the total wages and benefits of the employee. The applicable legislation sets out detailed rules in this respect.

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Harassment

What is the position in relation to harassment?

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Where harassment may be deemed a form of discrimination, it is prohibited and penalised as such. In addition, depending on the circumstances, harassment may be punished as various crimes (eg, threats, blackmail or violence).

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Whistleblowing

What is the position in relation to whistleblowing?

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Romanian labour legislation makes no provision for special protection for whistleblowers.

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What is the position in relation to:

Protected categories

(a) Age?

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All forms of direct and indirect discrimination based on age are prohibited and subject to penalties.

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(b) Race

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All forms of direct and indirect discrimination based on race are prohibited and subject to penalties.

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(c) Disability?

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All forms of direct and indirect discrimination of disabled people are prohibited and subject to penalties.

In addition, specific rules are in place to further protect disabled employees. For instance, the probation period cannot exceed 30 days and disabled employees are entitled to three extra days of annual leave.

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(d) Gender?

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All forms of direct and indirect discrimination based on gender are prohibited and subject to penalties.

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(e) Sexual orientation?

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All forms of direct and indirect discrimination based on sexual orientation are prohibited and subject to penalties.

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(f) Religion?

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All forms of direct and indirect discrimination based on religion are prohibited and subject to penalties.

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(g) Medical?

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All forms of direct and indirect discrimination based on medical conditions are prohibited and subject to penalties.

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(h) Other?

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Romanian law forbids all forms of direct and indirect discrimination based on any criteria with the purpose of restricting or eliminating equal recognition, enjoyment or exercise of human rights, fundamental freedoms or any other rights recognised by law in the political, economic, social and cultural arenas or in any other field of public life.

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Privacy in the workplace

Privacy and monitoring

What are employees' rights with regard to privacy and monitoring?

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All persons' privacy and personal data are protected by the Constitution and the Civil Code, which also provide for hands-on protection. Based on such provisions, any measure considered as trespassing on a person's private life entitles that person to:

- claim compensation for prejudice;
- seek a court order condemning the illicit nature of the measure and ordering it to cease; and
- seek any other measures deemed necessary to cease the trespass and repair the prejudice incurred.

Therefore, the key issue is whether an employee's conduct at work (including work emails and the use of company devices) is deemed to be part of his or her personal data. Since no particular regulations are in force in Romania in this regard, the relevant national and European jurisprudence should be considered.

For instance, the recent ruling of the European Court of Human Rights in *Bărbulescu v Romania* stated that employer interference is permitted if it is limited in scope, proportionate and serves a legitimate purpose, and as such would ensure a sufficient balance between the employer's interests and the employee's rights under Article 8 of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

In addition, the employee's monitoring is subject to private data protection legislation. For example, employers who monitor employees via web cameras must notify the Data Protection Authority. The authority has also issued detailed rules concerning the monitoring of employees' activity by means of video cameras.

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To what extent can employers regulate off-duty conduct?

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The off-duty conduct of employees may not be regulated by the employer. However, the employee can be held responsible if his or her conduct proves harmful to the employer's public image. However, in practice such damage is hard to prove.

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Are there rules protecting social media passwords in the employment context and/or on employer monitoring of employee social media accounts?

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No express provisions protect social media passwords.

However, recording or using an employee's password for such accounts may be considered as trespassing on the employee's private life (see above regarding the protection of private life) or a breach of the employee's rights pertaining to his or her image, unless the employee has expressly consented thereto.

In certain cases, the storage and use of the password may even be a crime (eg, in case of the violation of the secrecy of correspondence). Moreover, the processing of such passwords may be deemed to be subject to private data protection legislation.

Therefore, unless obtained from public sources or (in certain cases) manifestly made public by the employee, in general a password cannot be processed without the employee's consent.

Similarly, the monitoring of social media accounts and processing of the data found thereon is subject to the rules concerning the protection of private life and private data protection legislation.

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Trade secrets and restrictive covenants

Intellectual Property

Who owns IP rights created by employees during the course of their employment?

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Unless otherwise stipulated in the employment agreement, IP rights belong to the creator (ie, the employee). The employee may authorise the use of his or her rights by a third party in return for consideration. However, the employer may use such rights for its own purposes without the employee's authorisation.

Unless otherwise provided in the employment agreement, computer program-related IP rights created by the employee during the performance of his or her employment duties or under the supervision of the employer belong to the employer.

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Restrictive covenants

What types of restrictive covenants are recognised and enforceable?

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The following restrictive covenants are recognised and enforceable:

- clauses pertaining to training (including retention clauses);
- non-compete clauses;
- mobility clauses; and
- confidentiality clauses.

However, this is a non-exhaustive list of the clauses considered by the law to be specific clauses of the employment contract. Other limiting clauses may be inserted provided that all of the legal requirements are complied with, including that:

- the clauses provide no less than the legal standard; and
- the employee waives none of the rights provided by the law.

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Non-compete

Are there any special rules on non-competes for particular classes of employee?

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While any employer can insert a non-compete clause in the employment contract, in certain cases specific legal provisions apply to particular classes of employees.

For example, directors in limited liability companies may not accept a director's mandate in a competing company or a company performing the same activity, or perform the same or a different kind of commerce solely or by means of another person or entity. Such directors may work with the company based on either a civil mandate agreement or an employment agreement.

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Discipline and grievance procedures

Procedures

Are there specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

Romania

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Employers must follow specific legal provisions with regard to disciplinary procedures. Ideally, however (and pursuant to the Labour Code), such procedures should be further detailed within the employer's internal regulations.

In a nutshell, the disciplinary penalties are as follows:

- a written warning;
- position downgrading;
- salary reduction; and
- termination of contract.

Disciplinary penalties may be applied only following a prior disciplinary investigation, which is also subject to specific statutes of limitation.

Employers need follow no specific legal provisions with regard to grievance procedures. Ideally, however (and pursuant to the Labour Code), such procedures should be further detailed within the employer's internal regulations.

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Industrial relations

Unions and layoffs

Is your country (or a particular area) known to be heavily unionised?

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Yes. Several industries and many large companies have union representation.

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What are the rules on trade union recognition?

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A union may be formed if it gathers at least 15 employees from the same company. Representation is recognised at entity level for unions gathering at least 50% plus one of the total number of employees. To be recognised, unions must be registered with the court.

Unions in the same industry may form a union federation. A union federation is recognised as representing an industry if it gathers at least 7% of the employees registered in that industry.

Two or more union federations may form a union confederation. A union confederation is recognised as constituting national representation if it gathers at least 5% of the employees registered nationally.

Both union federations and confederations must be registered with the court.

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What are the rules on collective bargaining?

Romania

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A union may be formed if it gathers at least 15 employees from the same company. Representation is recognised at entity level for unions gathering at least 50% plus one of the total number of employees. To be recognised, unions must be registered with the court.

Unions in the same industry may form a union federation. A union federation is recognised as representing an industry if it gathers at least 7% of the employees registered in that industry.

Two or more union federations may form a union confederation. A union confederation is recognised as constituting

national representation if it gathers at least 5% of the employees registered nationally.

Both union federations and confederations must be registered with the court.

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Termination

Notice

Are employers required to give notice of termination?

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Employers must give notice of termination (of at least 20 working days) in only the following cases:

- termination for medical reasons;
- termination for professional misconduct; and
- termination for reasons unrelated to the employee's person (ie, restructuring of his or her position).

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Redundancies

What are the rules that govern redundancy procedures?

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Under Romanian law, redundancy may occur in case of dismissal due to the elimination of the employee's position. However, the elimination of the position should be:

- effective (the position should be eliminated from the organisational chart of the company); and
- determined by a real and serious cause.

In practice, the courts have held that a position is effectively eliminated if it is removed from the organisational chart of the company. However, such removal has not been considered effective if the position was reinstated under a different designation (with similar or identical job-related tasks) or within a short period of being removed.

Procedurally, the following steps must be taken:

- drafting a document containing the arguments behind the decision to eliminate the position from the organisational chart of the company (in practice, the economic reasons behind the decision);
- adopting the internal decision to eliminate the position from the company's organisational chart;
- modification of the organisational chart;
- notifying the employee of the termination (observing the relevant notice period); and
- issuing the termination of employment decision.

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Are there particular rules for collective redundancies/mass layoffs?

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Under Romanian labour law, collective redundancy is established if a certain number of employees are dismissed within a period of 30 calendar days. The number of dismissed employees is calculated by reference to the total number of employees. In order to qualify the process as a collective redundancy, the employment contracts terminated at the employer's initiative, with no connection to the employee, will also be taken into account.

The law regulates in detail the procedure to effect a collective redundancy, including a period of exchanges between the union or the employee's representatives on one side and the employer on the other, and notifications to the local labour agency.

Protections

What protections do employees have on dismissal?

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Dismissal cannot be adopted:

- during temporary incapacity from work;
- during the suspension of activity due to quarantine;
- in case of pregnant female employees, if the employer is aware of pregnancy before the dismissal decision;
- during maternity leave;
- during child-rearing leave in the case of children with disabilities;
- during leave for raising a child under two or three years (in the case of a child with disabilities);
- during the leave for caring for a sick child under 7 years or, in case of children with recurrent disabilities, under 18 years;
- during annual leave.

It is also forbidden to dismiss an employee:

- based on criteria such as gender, sexual orientation, genetic characteristics, age, nationality, race, colour, ethnicity, religion, political option, social origins, disability, family situation or responsibility, union membership or activity; or
- for making use of the right to strike and union rights, as provided by the law.

Special protection is guaranteed for an employee dismissed collectively; within 45 days of dismissal, the employee has the right to take priority in being rehired for the same position without interview.

Any dismissal decision issued without complying with the legal procedure is void.

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Courts/tribunals

Jurisdiction and procedure

Which tribunals or courts have jurisdiction to hear complaints?

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Individual labour disputes are settled by the second-instance courts known as 'tribunals'. The employee must file a claim with the tribunal in whose jurisdiction the claimant is domiciled or where the employer is headquartered. If the claimant is the employer, the only competent tribunal is the one in the territorial jurisdiction where the employer is headquartered. The courts have special divisions to hear labour conflicts. An appeal against the tribunal's decision is heard by the third-instance courts of appeal).

The law provides for conciliation, mediation and arbitration to solve collective labour disputes. In case of strike, the employer may ask the court to end the strike. The pre-conciliation procedure is mandatory in all cases.

The Ministry of Labour, Family and Social Protection or the territorial labour inspectorate, as the case may be, convenes the parties to the conciliation procedure within of no more than seven working days from the date of appointing a delegate. If conciliation fails, either a strike is triggered or mediation or arbitration begins.

The mediation or arbitration of a collective labour conflict is mandatory only if the parties agreed to undergo this procedures before the strike was triggered. Mediation and arbitration are to be held before the Office for the Mediation and Arbitration of Collective Labour Conflicts of the Ministry of Labour, Family and Social Protection.

Awards issued by this office are binding on the parties; they supplement collective labour agreements and are enforceable titles. An arbitral award may be set aside before the court of appeal in whose territorial jurisdiction the arbitration took place within one month of receipt of the award.

However, until now the government has issued no decision regulating the establishment, organisation and functioning of the office. Thus, mediation and arbitration are conducted by mediators and arbitrators on a list established annually by the minister of labour and social protection, with the consent of the Economic and Social Council.

If arbitration does not take place and the employer considers the strike to breach the law, the employer may ask the

relevant tribunal to terminate the strike. The tribunal's decision may be appealed before the relevant court of appeal.

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What is the procedure and typical timescale?

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According to the law, claims regarding labour conflicts must be solved with celerity. Thus, there should be no more than 10 days between each hearing. The parties must be summoned to the hearing at least 24 hours before it takes place. However, in practice, this deadline is almost impossible to keep given the courts' activities and operations, as well as the difficulties faced by the parties in preparing and filing procedural documents, including the administration of evidence.

After receiving the claim, the court checks the claim and asks the claimant for any missing information. After receipt of the claimant's response, the claim is delivered to the defendant. The defence is communicated to the claimant, who can also submit a response. Then the first hearing is established by the court and the parties are summoned. The burden of proof in labour disputes rests with the employer, which is obliged to file evidence in its defence before the first hearing. During the hearings, the court will supervise the administration of evidence in compliance with the celerity regime and will hear the parties' conclusions. The case is usually settled after approximatively four hearings one month apart. Thus, a typical timescale for such a claim would be four to eight months.

For collective labour disputes, the timescale depends on the parties, as they may agree through conciliation or mediation, decide to go to arbitration or move to carry out a strike. If a strike is carried out and the employer considers that the strike has been declared or is being carried out in violation of the law, it can ask the tribunal to end the strike. The tribunal will set a time limit for hearing the claim of no more than two working days after its registration, and will summon the parties. The tribunal may reject the employer's request or declare the strike illegal and order it to end. This decision can be appealed, in which case the file is sent to the court of appeal. This typically takes two months in total.

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Appeals

What is the route for appeals?

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In the case of both individual and collective disputes, an appeal is filed with the tribunal that issued the earlier judgment. The tribunal will send the appeal, together with the entire first-instance file, to the court of appeal in whose territorial jurisdiction the tribunal is headquartered. The decision rendered by the court of appeal is final, meaning that it is enforceable and that only extraordinary second appeals can be filed against it for a limited number of reasons. However, the first-instance judgments may also be temporarily enforceable if they concern:

- the payment of wages or other rights arising from the employment relationships and the amounts due under the Unemployed Act;
- compensation for work accidents; or
- social security pensions.

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