



Q/A: EMPLOYERS IN CORONA TIMES

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Q1: What options are there for the Romanian employer during the Corona crisis?

According to recent law changes, an employer has several options in the event of a reduction in the volume of work, and a corresponding weak collection of debts, respectively:

- a 20% reduction in working hours with a corresponding reduction in wages for the jobs concerned (further reduction is possible if agreed with the employee)
- a temporary suspension of all or some of the work positions during the crisis, whereby the employee concerned is paid short-time work equivalent to 75% of the basic salary; around EUR 850 of this is covered by the social security budget, the rest (where applicable) can be covered optionally by the employer. In the event of a complete suspension of the employment relationship after the previous 20% reduction in working hours, the remuneration must be calculated on the basis of the correspondingly reduced basic salary.
- suspension of employment on the basis of force majeure, without compensation for the employer

Q2: What is the difference between the suspension of the employment contract due to force majeure and work cessation

motivated by a significant reduction of activity?

The Romanian government has regulated two distinct situations: although the non-collection of current debts would conduct to a temporary reduction or suspension of some or all of the work contracts, a complete suspension of payments to the employee would be only justified in case of force majeure, that is when the work contract need to be suspended because of the force majeure.

Legal specialists advise strong caution in relation to the concept: in the Romanian jurisprudence, the concept of force majeure is rare, so one must address to the small but existing jurisprudence of the similar legal systems in Western Europe. [For example, the ambiguity of the concept was clarified in the context of the 2003 SARS epidemic in the jurisprudence of the Austrian Supreme Court (Decision 4 Ob 103 / 05h).]

Temporary, drastic solutions are discouraged to the employer. Technical closure of companies with appropriate compensation for workers (so-called "short-time work") is particularly preferable because of the relief provided by the social security budget (payment from the social security budget is made no later than 15 days after submission of the relevant documents to the local employment agency. Required documents have been reduced, the procedure can be carried out via the internet portal <http://aici.gov.ro>)

In any case, termination of work contracts without prior talks with the employers' representatives is excluded.

Q3: Is the aid package also suitable for sole traders?

Government Ordinance (OUG) No. 30 also applies to sole traders; Managers with civil contracts are also included.

Sole traders can claim up to 75% of the national average wage on the basis of a declaration the ceasement of all professional activities.

In all cases, the wages are taxable like regular wages (exceptionally, the labor insurance contribution within the meaning of Section 220 of the Romanian Tax Act is not due).

Q4: Can this allowance be seized?

Neither in the case of a reduction in working hours nor in the event of a complete suspension, there are no exceptions for ongoing enforcement proceedings against the employee; naturally, the non-work allowance can be seized within the limits of the general humanitarian protection provided by the Civil Procedure Code. According to Romanian law sources, the Civil Procedure Code does not stand against seizure of this allowance, unless one approximates the concept of temporary suspension of employment to unemployment under the 168th ILO (International Labor Organization) Convention.

This interpretation is generated by the special scope of the emergency measures pack adopted by the government within the provisions of the GO no. 30/2020. Accordingly, the short-time work allowance has been assimilated to the unemployment benefits given the fact that Romanian slang uses the same term

("şomaj") for these two concepts (NB - unemployment benefit can only be seized under certain restrictions).

However, a strong argument against the confusion is the fact the two allowances are treated differently for tax purposes.

In conclusion, until otherwise stated, seizure of this allowance should be carried out like on normal wages.

Q5: What happens in the case of multiple employment relationships?

If an employee works on a number of individual companies, he is not entitled to the allowance, unless all his employment contracts are simultaneously suspended according to the law, in which case he is entitled to an allowance calculated according to his most favourable employment relationship.

Q6: Are pensioners entitled to work suspension allowance?

No exceptions apply to pensioners, the compensation is also possible in the case of work contracts valid during the retirement period.

Q7: Which periods of time are covered by the social security?

The legislation only applies starting from March 16 (when the state of emergency was declared) and the benefits are only

applicable during the state of emergency. Therefore, payments are due to be made in April only for the last two weeks in March.

Q8: Is the employee entitled to full leave after the crisis?

Rather not.

According to the Romanian employment law, recreational leave is calculated pro rata (proportionally) to the duration of the employment relationship during the calendar year. Maternity leave and work incapacity leave both count as workdays in relationship to the recreational leave, however the situation of temporary cessation of work is not discussed within the Labor Act. Since exceptions are to be interpreted narrowly, work cessation generated by the corona-crisis should normally not be taken into account when calculating rights related to the recreational leave.

The debate is however open, and one could argue a full right to recreational leave albeit work cessation, given the fact that the allowance granted during this period is to be taxed accordingly; moreover, the period of suspension is also taken into account as seniority for retirement benefits.

Q9: What happens in the event of maternity or childcare leave overlapping work cessation agreements?

All applications for leave (either maternal or childcare leave) that have previously been submitted to the employer must be taken into account with priority.

Moreover, in our opinion, maternity leave as well as work incapacity leave could raise ground for suspension of work cessation allowance, given the fact that such suspension operates lawfully and automatically. However, one could argue against.

Q10: What happens if an employee has to be quarantined because of a suspected coronavirus infection?

The employer is not forced to suspend operations during the corona crisis. However, the operations can only be carried out if all possible safety measures can be readily implemented for the employees.

If an employee has to be quarantined, he is entitled (as is the case with other infectious diseases) to the payment of an allowance representing $\frac{3}{4}$ of his average salary over the past 6 months out of the national budget (§10 GO 158/2015). If the employee falls sick, this allowance is raised to 100% (§17 paragraph 2, GO 158/2015).

If the employee falls sick during work cessation, he is entitled to medical leave. This is explained by the fact that the monthly allowance paid to the employer during temporary work cessation is taxed accordingly, which would normally entitle the worker to all rights with respect to the recovery of his/hers working abilities.

Q11: Can the employee continue to work while the company is closed?

The employee is not forbidden to voluntarily work for the employer during the closure of the company – however, the employer does not possess any corresponding enforcement measures.

Continuation of the activities during the suspension period is not advisable due to insufficient occupational accident protection. Moreover, as state funds are involved, possible controls are to be expected after the crisis.

Q12: How can lawyers help?

Lawyers and other advisors will be happy to advise you; however, they cannot predict the outcome of the crisis more than other experts can.

We advise extreme caution in making the necessary changes to your companies' work organigramme. Since this will imply restricting labor rights as well as deployment of state funds, we advise extreme caution when implementing short-time work, remote work or complete work cessation.

Your lawyer can advise you on moving your business online, obtaining transport licenses for delivery services as well as temporarily suspending your activity or your debts.

Of course, the experts at Redcase™ will be happy to assist you at any time.