



# Restrictive measures in the field of labour relations during the alert state in Romania provided by Law no. 55/2020

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In the context of the crisis generated by the COVID-19 pandemic<sup>1</sup>, it was necessary to adopt by law, during the state of alert<sup>2</sup>, restrictive measures, essentially temporary and, where appropriate, gradual, proportionate to the forecast or manifested level of severity of necessary to prevent and remove imminent threats to conventional, Union and constitutional rights to life, physical integrity and health of persons, in a non-discriminatory manner, and without prejudice to the existence of other fundamental rights or freedoms.

Law no. 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic<sup>3</sup>, in section 3 (art. 16 - 31) establishes a series of measures to adequately protect labor relations.

Regarding the modification of individual employment contracts, it is provided in art. 16 that secondment may be ordered, which constitutes “temporary change of job, at the disposal of the employer, to another employer ...”<sup>4</sup>, it is specified that employers (public institutions involved in combating the COVID-19 pandemic) may order secondment with the prior consent of the employee, and at the same time, in addition to the provisions of art. 45 of the Labor Code, provided that the employer to whom the secondment is made is from the same field of activity.

The employer may order (art. 17), with the consent of the employee, to carry out the activity in the form of telework or work at home, to change the place of work or his duties. Practically, employers will no longer be able to unilaterally decide to change their job or duties, as was previously possible, during the state of emergency<sup>5</sup>.

During the alert state, depending on the specifics of the activity and needs, the leaders of the public institutions involved in combating the COVID-19 pandemic, as well as its effects may dispose, according to art. 18, unilaterally the interruption of the rest leave, of additional rest, without payment, of studies and for professional training of the employed personnel and the resumption of the activity for the own personnel.

According to art. 151 para. 2 of the Labor Code, the employer may recall<sup>6</sup> the employee from rest leave in case of force majeure or for urgent interests that require the presence of the employee at

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<sup>1</sup> On March 11, 2020, the representatives of the World Health Organization declared the situation generated by COVID-19 as a pandemic, [www.who.int](http://www.who.int), consulted on March 12, 2020.

<sup>2</sup> Starting with 15.05.2020, it was declared, by GD no. 24/2020, published in the Official Gazette of Romania, Part I no. 395 of May 14, 2020, the state of alert at national level, for a period of 30 days.

<sup>3</sup> Published in the Official Gazette of Romania, Part I no. 396 of May 15, 2020.

<sup>4</sup> Dan Țop, *Labor Law Treaty*, Mustang Publishing House, Bucharest, 2018, p. 308.

<sup>5</sup> The state of emergency was established in Romania on March 16, 2020 by Decree no. 195/2020 and extended until May 14, 2020 by Decree no. 240/2020.

<sup>6</sup> Alexandru Țiclea, *Treaty on working time and rest time*, Universul Juridic publishing house, Bucharest, 2020, p. 246.

work, this time such a possibility is extended to other types of leave granted to employees free of charge, study and training.

Regarding the collective labor contracts, art. 20 para. 1 that “the validity of collective labor agreements and collective labor agreements is extended during the state of alert, as well as for a period of 90 days from its termination”, which constitutes a derogation from the provisions of art. 141 of Law no. 62/2011 of the social dialogue<sup>7</sup>

At the same time, it is shown in par. 2 that "the parties have the obligation to initiate collective bargaining within 45 days from the end of the state of alert ...", a term also provided by the Law on Social Dialogue, although for reasons related to the correlation of deadlines set by the legislator for collective bargaining a period of 60 days would have been indicated<sup>8</sup>.

If the Labor Code gives the possibility to the employer, through the provisions of art. 118, to establish individualized work programs<sup>9</sup>, which imply a flexible way of organizing working time, with the consent of the employee in question, art. 21 of Law no. 55/2020, stipulates that “employers in the private system, central and local public authorities and institutions, regardless of the method of financing and subordination, as well as autonomous utilities, national companies, national companies and companies in which the share capital is wholly or majority owned state or an administrative-territorial unit, with a number of more than 50 employees, may establish individualized work programs, without the employee's consent, so that between employees to ensure the existence of an interval of one hour at the beginning and end of the program work, in a period of 3 hours”. Thus, by derogation from the provisions of art. 118 para. 1, the consent of the employee is no longer required, both from the public sector and from the private sector, so that the employer is the one who will establish the structure of this program, without any consultation with the employee in question.

During the alert state, for the employees from the public system, the employer can establish, provides art. 22, this time, with their consent, the execution of works or tasks of urgent service, in connection with preventing and combating the situation that generated the state of alert, regardless of the nature of the duties of the service, with the provision of measures to protect the employee.

During the alert state, the Government will order according to art. 23, special measures to support employers and protection of employees and their families, and the competent authorities provide protection and prevention measures for employees in vulnerable situations.

During the alert state, art. 25 specifies that the employees of the public system will remain available to perform the service tasks, depending on the volume of activity of the institution, in order to achieve the purpose of Law no. 55/2020, but the application of these provisions will be made in compliance with a maximum number of 48 hours per week, including overtime, in other words according to the provisions of art. 114 para. 1 of the Labour Code.

An original provision is that of art. 26, respectively, that, during the state of alert, for serious non-fulfillment of duties related to the establishment and application of measures provided by this law, persons in public institutions whose duties are to prevent contamination and control COVID-19 effects, may be suspended from office, according to the own norm of organization and functioning of the institution or public authority, as the case may be. The suspension ceases by right on the date of the cessation of the alert state ...”.

It is also provided that the positions that have become temporarily vacant by applying the suspension may be filled by civil servants or contract staff, by appointment by the competent authority, without competition, which is a derogation from the provisions of art. 30 para. 1 of the

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<sup>7</sup> Published in the Official Gazette of Romania, Part I, No. 322, of May 10, 2011.

<sup>8</sup> Alexandru Țiclea, *Triggering collective bargaining*, in the Romanian Journal of Labor Law, no. 8/2011, p 45.

<sup>9</sup> Dan Top, *op. cit.*, p. 441.

Labor Code and from the essential condition that the existing vacancies in the list of positions be filled, in relation to the needs of each unit<sup>10</sup>.

At the same time, public institutions and authorities may hire staff without competition, depending on the needs determined by preventing and combating the situation that generated the state of alert and exclusively for related activities, for a determined duration, which may not exceed 30 days from date of cessation of alert status. From these provisions it can be concluded that the duration of the employment contract can only be for 60 days, 30 days for the duration of the alert and 30 days after its termination.

During the state of alert, in public institutions and authorities, any type of competition for filling vacant or temporarily vacant positions or positions, except those in the field of health, shall be suspended.

During the state of alert, the provisions of Law no. 19/2020 regarding the granting of some days off to the parents for the supervision of the children<sup>11</sup>, in the situation of the temporary closure of the educational units, with the subsequent modifications and completions, is applied according to art. 28, until the end of the school year.

During the alert state it is forbidden, provides art. 29, the declaration, initiation or development of collective labor disputes in the units of the national energy system, in the operative units of the nuclear sectors, in the units with continuous fire, in the sanitary and social assistance units, of telecommunications, of the public radio and television, in the transports on the railways, in the units that ensure the public transport and sanitation of the localities, as well as the supply of the population with gas, electricity, heat and water.

Termination of employment relations by resignation in the case of personnel employed in health units, social assistance, medical and social assistance and in institutions in the field of defense, public order and national security, by derogation from the provisions of art. 81 para. 4 of the Labor Code, the notice periods do not start to run, and, if they have started to run, they are suspended for the entire duration of the alert state.

It is also provided in art. 31 during the state of alert, for the Romanian employees who are to carry out activity abroad, the competent authorities will order special protection measures without specifying which ones they are.

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<sup>10</sup> I.T. Ştefănescu, *Theoretical and practical treatise on labor law*, Universul Juridic publishing house, Bucharest, 2017, p. 309.

<sup>11</sup> Published in the Official Gazette of Romania, Part I, no. 209 of March 14, 2020.