

PELIP

BUSINESS LAW

The Government imposes a temporary obligation to initiate collective bargaining on all employers

Note: The information contained in this article shall not be construed as legal advice.

On Thursday, 16 November, Emergency Ordinance no. 82/2017 (“**GEO 82/2017**”) imposing on all employers the temporary obligation to initiate the negotiation of the collective labour agreement for the implementation of the new provisions of the Fiscal Code whereby social security contributions were transferred to employees (changes made by GEO no. 79/2017) was published in the Official Journal.

This obligation applies both if there is no collective labour agreement or collective agreement in place and if there is a collective labour agreement or collective agreement in place, in which case the obligation is to negotiate the conclusion of an addendum to the existing collective labour agreement/collective agreement.

By way of derogation from the provisions of Social Dialogue Law no. 62/2011, the obligation to initiate negotiations applies to all employers in Romania, irrespective of the number of their employees. As such, it also applies to employers who have less than 21 employees.

In addition, by way of derogation from the provisions of Social Dialogue Law no. 62/2011, if there is an unrepresentative trade union at the company level, negotiation on these issues only will be carried out both with the employees’ representatives and with the unrepresentative trade union federations (previously only representative federations at sector level had this quality).

In the absence of a trade union at the level of the company, employees’ representatives may participate in the negotiations together with a representative of a representative federation at sector level or of a representative confederation at national level, at the invitation of employees’ representatives. At a first reading, it seems that employees’ representatives have the right to invite or not the representatives of the federation. As the text is written, we can also expect a contrary interpretation by the labour authorities in the sense that employees’ representatives should also invite the representatives of the federation. Normally, the failure to invite the federation should be the responsibility of employees’ representatives, but in practice problems may arise at the time of registration of the addendum with the Territorial Labour Inspectorate.

The provisions of GEO 82/2017 above, namely the obligation to negotiate, apply between 20 November - 20 December 2017. The manner in which the text is written seems to derogate from art. 129 (5), which stipulated a duration of negotiations of 60 days. The intention seems, of course, to be that these aspects are clarified by employers before Christmas.

GEO 82/2017 does not provide for sanctions for non-observance of the obligation to initiate collective

negotiations during this period.

A normative act regulating the applicable sanction is likely to be issued and the Territorial Labour Inspectorate might consider that GEO 82/2017 is supplemented by the provisions of Social Dialogue Law 62/2011, which allows the representatives of employees / trade union representative organizations to request the initiation of collective negotiations, and if the company fails to do so, it may be sanctioned with a fine between RON 5,000 and 10,000.

Against the background of the problem, as also reported by the press, there are more options available for employers besides the unconditional increase in gross salaries, especially the award of bonuses.

An interesting option is also the agreement between the employer and the employee of a net salary value, with the gross value varying according to the tax regime. Besides the problems of communication and management of the relationship with employees, from a legal and technical point of view questions arise as to how such a clause will be regulated (considering that Order No. 64/2003 containing the Individual Labour Agreement template contains the gross salary), as well as to the manner of reporting and documenting the gross salary in the perspective of future tax changes.



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