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The relaunch of social dialogue in Romania and its impact on employers

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A new law on social dialogue has recently been adopted in Romania, Law No 367/2022 on social dialogue [1] ("**Law No. 367/2022**"), repealing the previous regulation, Law No. 62/2011 [2].

The new law on social dialogue is a true game changer and brings four significant reforms, respectively:

- ✓ the obligation to perform collective bargaining at both the unit (if it has at least 10 employees) and at the bargaining sector level;
- ✓ the possibility to perform collective bargaining at the national level;
- ✓ new obligations for employers to inform and consult employees' representatives/trade union representatives;
- ✓ extension of the range of cases triggering collective labour disputes.

In addition, unlike the previous regulation, which was strongly criticised by trade unions, the new law on social dialogue gives trade unions greater powers and establishes an easier procedure for setting up and representing employees.

Thus, in the next period, we expect a relaunch of social dialogue in Romania and an increase of the coverage of employees by collective labour agreements. Our question is whether the new "collective umbrella" will be able to successfully combine the current needs of employers with those of employees, or whether it will only become an instrument of coercion against employers.

In this context, this article aims to present the most important aspects introduced by Law No. 367/2022, as well as the obligations incumbent on employers in the new socio-legal context.

01 Establishment and representation of trade union

Law No. 367/2022 simplifies the procedure for setting up trade unions by reducing the number of employees/workers in the same unit who can form a trade union, from 15 to 10 employees/workers in the same unit.

In addition, the law also provides for the possibility of forming a trade union with at least 20 employees/workers from different units in the same collective bargaining sector. In this case, members of trade union management bodies will have access to the units in which they have members for the purpose of carrying out trade union activities, with the obligation to comply with the internal rules of the envisaged units.

Another novelty is that the unemployed have the right to join or remain union members, but will not be considered when determining the number of union members against which the union's representation is established.

For public officials who are members of a trade union's governing body, a case of suspension by law of the individual employment agreement has been introduced for this situation, with the obligation for the employer to keep the position and the job of the public official.

Legal personality is acquired similarly to the previous provisions.

As regards trade union representation, the cumulative conditions laid down in the previous rules are largely maintained. A change concerns the number of members of the trade union or, where appropriate, of the component trade unions of the trade union federation, in order to have representation, i.e., at least 35% of the total number of employees/workers in a contractual employment or service relationship with the unit (previously the percentage was 50% + 1 of the number of employees of the unit).

1. Published in the Official Gazette, Part I, No. 1238 of 22 December 2022. In force from 19 January 2023.
2. Published in the Official Gazette, Part I, No. 322 of 10 May 2011. Effective from 13 May 2011 until 24 December 2022.

02 Election of the employees' representatives

Previously, the social dialogue law did not regulate the institution of employee representatives. Regulations on this were found in the Labour Code.

Law 367/2022 regulates the institution of employee representatives, thereby implicitly repealing the relevant section of the Labour Code. Basically, the law reiterates a number of rules established by the Labour Code, such as:

a) employee representatives are elected with the vote of 50% + 1 of the total number of employees/workers in the unit;

b) their duration of mandate is two years.

At the same time, the law also brings a number of changes and/or supplements to existing information, such as:

a) the number of employees/workers employed in a unit where their interests can be promoted and represented by employee representatives has been reduced from 20 to 10 employee/workers;

b) it provides the possibility of setting up an initiative group, which will draw up the procedures and/or rules for conducting the elections and communicate them to the employer, who must inform all employees/workers within 10 days of their receipt;

c) it provides a maximum number of representatives elected according to the number of employees hired in the unit (e.g., two representatives for employers with less than 100 employees/workers; three representatives for employers with between 101 and 500 employees/workers), if there is no agreement between the employer and the employees/workers on the number of representatives;

d) persons who (i) occupy managerial positions; (ii) represent management in dealings with employees/workers; or (iii) participate in management decision-making at the unit level cannot be elected as employee representatives;

e) at the request of employees, the employer shall facilitate the procedures for the election of employee representatives.

03 Information and consultation obligation

The law introduces new rules on informing and consulting employees, represented in accordance with the law, in particular on recent and likely developments in the activities and economic situation of the unit.

Thus, the employer has the following obligations:

- to initiate the process of information and consultation after the reporting of the financial statements of the unit for the previous year or, in case of omission, the process will be carried out at the written request of the employees;

N.B. Failure to comply with this obligation constitutes a contravention and is sanctioned with a fine of RON 15,000 to RON 20,000.

- to ensure that the represented employees are informed and consulted on decisions that may lead to significant changes in work organisation (e.g., transfer of undertakings, acquisitions, mergers, collective redundancies, closures of production units, etc.).

In addition, the new law on social dialogue provides that:

- the employer must invite the representative trade union to participate at the meetings of the board of directors or other body assimilated to it, if they concern matters of professional and social interest with an impact on employees/workers;
- decisions of the board of directors or other bodies assimilated to it on matters on which employees/workers are informed and consulted in accordance with the law shall be communicated in writing to the represented employees/workers within two working days of the date of the meeting.

In workplaces where trade unions are not established, the employer is obliged to allow a public information session on individual and collective rights of employees to be held at least once a year, at the request of the trade union federations from the collective bargaining sector of the unit concerned, with the invitation of representatives of these federations.

04 Collective bargaining

Firstly, the number of employees/workers employed has been reduced from 21 to 10 employees/workers for whom employers are obliged to engage in collective bargaining. As in the previous regulation, the employer is only obliged to initiate negotiations, not to conclude a collective labour agreement.

N.B. Failure to comply with this obligation constitutes a contravention and is sanctioned with a fine of RON 15,000 to RON 20,000.

Secondly, we want to highlight that::

- collective bargaining at the bargaining sector level becomes mandatory;
- the possibility of negotiating the collective labour contract at the national level is reintroduced, as it existed before the adoption of Law No. 62/2011, which will be able to confer additional rights to all employees.

The initiative to negotiate can come from either of the social partners (previously it was specified that the initiative came from the employer or the employers' organisation), and the initiator of the negotiation must do so at least 60 days before the expiration of the collective labour agreement (the previous deadline was 45 days). If a unit does not have a collective labour agreement, the negotiation of a collective labour agreement can be initiated at any time.

Notice of the intention to commence collective bargaining shall be given in writing to all parties entitled to negotiate the collective labour agreement at least 15 days before collective bargaining commences. Failure to invite all parties to negotiations may result in the refusal of the authority to register the negotiated collective agreement.

05 Conclusion of the collective labour agreement

Firstly, a number of recommendations have been introduced regarding clauses that could be included in the collective labour agreement (e.g., setting minimum grading coefficients per employee category, measures adopted for counselling and professional assessment of employees/workers, measures for harmonising family life with professional objectives, etc.).

Secondly, it acknowledges the right of non-representative trade unions to represent employees in collective bargaining. This represents an important increase of the powers of non-representative trade unions, as previously they could only represent employees in collective bargaining if they were affiliated to a representative trade union federation and only together with employee representatives.

The duration of collective bargaining is a maximum of 45 days (previously, it was 60 days) and may be extended by agreement of the parties.

The employer is required at the first meeting of the parties to provide the parties with confidential information, such as:

- the economic and financial situation of the unit to date and its outlook for the next contractual period;
- the proposed measures concerning the organisation of work, working hours and working time for the next contractual period;
- the proposed measures to protect the rights of employees/workers in the event of transfer of the unit or part of it;
- measures proposed by the employer to promote improvements in the occupational safety and health of employees/workers during the next contractual period.

06 Collective labour disputes

Collective labour disputes can be triggered in more situations than under the old regulation, such as:

- if, although negotiations on a collective agreement have begun, the employer does not provide the trade union and/or employee/worker representatives with the information required by law for the first meeting in the negotiations;
- the employer refuses to start negotiating if the parties have provided for clauses to be renegotiated periodically at least 60 calendar days before the expiration of the collective agreements/clauses stipulated in the addenda to the collective labour agreements.

In addition, a collective labour dispute may also relate to the failure to grant collectively individual rights provided for in the applicable collective labour agreements, if a dispute has been initiated in this respect in court and has not been concluded within a maximum of 45 days, for a certain number of employees, namely:

- at least 10 employees/workers, if the employer employs more than 20 employees and less than 100 employees;
- at least 10% of employees/workers if the employer has at least 100 employees but less than 300 employees;
- at least 30 employees/workers if the employer employs at least 300 employees.

The conciliation procedure is mandatory in all cases of collective labour disputes. It is still up to the parties whether they initiate mediation or arbitration.

A strike may only be called for reasons expressly provided for by law and if:

a) the conciliation procedure has been carried out;
b) a warning strike has taken place (maximum duration of the strike is two working days before the actual strike);
c) the time of the strike has been notified to the employers by the organisers at least two working days in advance or at least five working days in advance in the case of a unit providing services of national interest (e.g., telecommunications, public transport and sanitation, etc.).

07 The main obligations incumbent on employers in light of the new legislative changes

The main obligations incumbent on employers in light of the new legislative changes are:

a) to initiate the collective bargaining procedure (it is not mandatory to conclude a collective labour agreement) for units with at least 10 employees;

b) to initiate the information and consultation process after the reporting of the financial statements of the unit for the previous year, for units where there are represented employees; in case of omission, the process will be carried out at the written request of the employees;

c) to ensure that represented employees are informed and consulted on decisions likely to lead to significant changes in work organisation;

d) to invite the representative trade union to participate at the meetings of the board of directors or other body assimilated to it, if they concern matters of professional and social interest with an impact on employees;

e) to communicate the decisions of the board of directors or other bodies assimilated to it on matters on which employees are informed and consulted to the represented employees within two working days of the date of the meeting;

f) to facilitate the procedure for electing employee representatives - only at the employees' request.

Failure to comply with the obligations set out in letters (a), (b) and (d) above may trigger fines of up to RON 20,000 for employers.

For more details, please contact your **employment and labour law team in Romania**

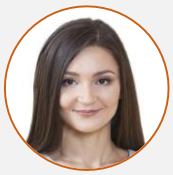
Remus Codreanu
Partner, Head of Service
remus.codreanu@kinstellar.com

Lidia Zărnescu
Senior Associate
lidia.zarnescu@kinstellar.com

Cătălin Roman
Senior Associate
catalin.roman@kinstellar.com

Mădălina Anghenie
Senior Associate
madalina.anghenie@kinstellar.com

Claudiu Ciubotaru
Associate
claudiu.ciubotaru@kinstellar.com



Gabriela Ion
Associate
gabriela.ion@kinstellar.com

Rena Saftencu
Associate
rena.saftencu@kinstellar.com

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