



Legal Newsletter May 2023

GEO no. 42/2023 amends the Social Dialogue Act and the Labour Code

Government Emergency Ordinance no. 42/2023 introduces legislative amendments to the Labour Code and the Law on Social Dialogue.

According to the Explanatory Note to GEO no. 42/2023, the amendments to the Labour Code and the Law on Social Dialogue were adopted in order to clarify certain elements in terms of legislative technique, the correlation of contradictory provisions, the correction of material errors and erroneous references including unclear and incomplete provisions, and the establishment/clarification of the material competence of the courts regarding the social dialogue framework. In addition, some of the defining elements concerning social partners and the provisions relating to negotiating parties at every level of collective bargaining were reassessed.

GEO no. 42/2023 introduces two amendments to the Labour Code:

- the initiation of collective bargaining now becomes compulsory for employers with at least 10 employees
- the provisions of the Social Dialogue Law have been correlated with those of the Labour Code in terms of establishing the jurisdiction of the court as the competent forum for judging individual and collective labour disputes, given that the new Social Dialogue Law had previously removed the provisions on jurisdiction as well as any reference to individual labour disputes. This eliminates the ambiguity in labour jurisdiction

GEO no. 42/2023 introduces changes to the Social Dialogue Law, less than half a year after it came into force, with the following effects:

- it sets a deadline of 5 calendar days for the employer to initiate the negotiation procedure by arranging and holding the first negotiation meeting
- it correlates the provisions applicable to collective agreements with those applicable to collective labour agreements
- a representative of the SME employer organisations, who is legally entitled to participate in the negotiation, will take part in the negotiation of collective labour agreement at sectoral level; a written refusal to participate/sign, however, does not constitute grounds for non-registration of the collective labour agreement
- any act of interference by employers or employer organisations, either directly or through their representatives or members, in the establishment of trade union organisations or the exercise of their rights is prohibited and will be punished
- it redefines the notion of collective bargaining sectors as areas of the national economy in which the social partners agree to negotiate collectively and which are established by the National Tripartite Council for Social Dialogue; these sectors are approved by order of the minister responsible for social dialogue and published in the Official Gazette of Romania, Part I
- for the duration of their participation in a strike, the individual employment agreement or employment relationship will be suspended at the initiative of the employee and not by law
- when an individual employment agreement is concluded or during its performance, the parties may add a clause to the agreement stipulating that any individual labour dispute shall be settled amicably by conciliation; this provision promotes the amicable and speedy settlement of individual labour disputes.

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These legislative amendments demonstrate the Romanian Government's wish to improve the legal framework for open dialogue and consultation between government, trade unions and employers, regardless of sector of activity.

However, this legislation can be criticised in terms of the right of the striking employee to request suspension of their employment agreement, a case of interruption of seniority, whereas under the previous provisions suspension of the employment agreement occurred by law and did not affect seniority.

In conclusion, only after these provisions have been correctly implemented will we know whether the legislative loopholes with their potential for negative economic effects on the labour market have been eliminated, whether the right to strike is respected and whether a regulatory framework tailored to the current situation has been adopted.

Source: GEO no. 42 of 24 May 2023 amending and supplementing Law no. 367/2022 on social dialogue and Law no. 53/2003 (The Labour Code).

This newsletter is a service of TPA.

Kind regards,
Your TPA Team

Contact:

TPA Romania

Str. Grigore Cobălcescu 46, 010196 Bucharest, Romania.

Tel.: +40 21 310 06-69

Fax: +40 21 310 06-68

<http://www.tpa-group.ro>

<http://www.tpa-group.com>

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Cristina Gheorghita

Legal Partner

email: cristina.gheorghita@tpa-group.ro

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