

2024

WORKATION IN: ROMANIA

Overview of Mandatory Employee Protection Law



Workation in: Romania – Mandatory employee protection law

In a connected world, mobile delivery of work performance is becoming increasingly more common. The most popular phenomenon here is probably the so-called "workation". When employers allow work from abroad, it is not uncommon for mandatory employee regulations to be ignored, regularly unintentionally and out of lack of knowledge.

However, according to Art. 9 (1) Rome I Regulation, these must be taken into account. Usually, this concerns personal occupational health and safety law enacted in the public interest for reasons of public welfare.

As to the right to telework, this has been included quite recently in the national legislation¹ and also some related terms as flexible work program² applicable to the remote work. Teleworking represents a new form of organization of work by which the employee, on a regular and voluntary basis, performs his duties specific to the position, occupation or profession he holds in a place other than the workplace organized by the employer, using information and communication technology.

Essential is that the teleworking activity is based on the written agreement of the will of the parties and must be expressly stipulated in the individual employment contract. It has to be underlined that the Romanian legal provisions on teleworking are related mostly with measures for safety and health at work of workers and organization of the telework at the specific place, the employer having legal obligations in this respect.

More recently³, it has been included in the Romanian legislation the new concept of the digital nomad that according to its legal definition it refers in fact to a telework employee (non-EU citizen) and such new concept it is also related to some fiscal facilities.

The digital nomads are in fact the employees working on a cross-border teleworking basis as they are defined in the European legislation.

Still there are no specific regulations in Romanian legislation related to the cross-border teleworking and the applicability of the legal provisions on the posting of employees in the framework of the transnational provision of services could trigger a debate (in the absence

¹ Law on teleworking activity, April 2018, with further amendments

² In the Romanian Labor Code

³ Starting with January 2022 by amending the law regarding the foreigner's regime (non-EU citizens) digital nomad - the foreigner who is employed with an employment contract with a company registered outside Romania and who provides services through the use of information and communication technology or who owns a company registered outside Romania, within which he provides services through the use of information and communication technology and can carry out the activity of an employee or the activity within the company, remotely, using information and communication technology;

In what concerns the workation concept it is not regulated per se, but it could be considered (in the context of the Romanian legal provisions mentioned above) as assimilated to the telework/remote work notions (as interchangeable) since the place where the telework is performed by employee can be anywhere (either at home or another place organized by the employer or by the employee itself (including a vacation place), using the means of information and communication technology and/or the safe work equipment necessary for the performance of the work, and the parties being able to agree by written agreement including the use of the tele employee's own, specifying the conditions of use for them). However, there is no regulation as to perform workation in foreign countries (either within EU or abroad).

Yet, in the above legal context, when allowing an employee to work temporary in Romania, there are Romanian legal provisions that should be taken into account by an employer based in an EU member state as to the labor relationship with its tele employee, with the mention that the following list is only intended as an overview and cannot replace a specific and necessary case assessment.

1. Minimum wage

Government Decision no. 900/2023 established that, starting from October 1, 2023, the gross minimum basic salary per country guaranteed in payment shall be Lei 3,300 /month.

The gross amount of Lei 3,300 per month does not include increases and other additions and is established for a normal working schedule of 165,333 hours per month on average, representing 19,960 lei/hour.

2. Minimum paid leave

The minimum duration of annual rest leave is 20 working days (article 145 of the Romanian Labor Code).

Legal holidays on which no work is done, as well as paid days off established by the applicable collective labor agreement, are not included in the duration of annual leave.

The rest leave is taken every year. If the employee, for justified reasons, cannot take, in whole or in part, the annual leave to which he was entitled in the respective calendar year, with the consent of the person in question, the employer is obliged to grant the rest leave not taken in a period of 18 months starting with the year following the one in which the right to annual leave was born.

Cash compensation for unused rest leave is allowed only in case of termination of the individual employment contract (article 146 of the Romanian Labor Code).

3. Public holidays

Name	Date	Scope of application
New Year	January 1st and 2nd	nationwide
Day of the Union of the Romanian Principalities	January 24th	nationwide
Good Friday, the last Friday before Easter	They are granted depending on the date on which they are celebrated by the Christian religious cult	nationwide
The first and second day of Easter	They are granted depending on the date on which they are celebrated by the Christian religious cult	nationwide
May 1st	May 1st	nationwide
Children's Day	June 1st	nationwide
the first and second day of Pentecost	They are granted depending on the date on which they are celebrated by the Christian religious cult	nationwide
Assumption of the Virgin Mary	August 15th	nationwide
Saint Andrew, the First Called, the Protector of Romania	November 30th	nationwide
National Day of Romania	December 1st	nationwide
The first and second day of Christmas	December 25th and 26th	nationwide
Two days for each of the 3 annual religious		For persons belonging to legal religious cults, other than Christian ones

<p>holidays, declared as such by legal religious cults, other than Christian ones, for the persons belonging to them</p>		
<p>Employees who benefited from days off for Good Friday - the last Friday before Easter, the first and second day of Easter, the first and second day of Pentecost, both on the dates established for the legal, Christian religious cult to which they belong, as well as and for other Christian cult, they will recover additional days off based on a schedule established by the employer.</p>		
<p>Other legal holidays may be granted annually by the Government Decisions in order to merge more days off.</p>		

4. Maximum working time

Pursuant to the Romanian Labor Code, for full-time employees,

- **the normal/standard working time** is 8 hours per day and 40 hours per week (within the week it is usually uniform, 8 hours a day for 5 days, with two rest days).
- **uneven working hours** (one can also choose an uneven distribution of working time, observing the normal working time of 40 hours per week)
- **individualized work schedule** (the employer may establish such programs either at the employer's proposal - with the employees' consent, or at their request (the employer's refusal must be motivated in writing in time), may have a limited duration in time, with the employee's right to return to the original work schedule, either at the end of the agreed period or previously (if the conditions have ceased); involves a **flexible way** of organizing the working time: (i) a fixed period during which staff are simultaneously at the place of work, and (ii) a variable, mobile period during which the employee chooses his arrival and departure times, respecting the daily working time that is, the possibility of employees to adapt the work schedule, including by using remote work formulas, flexible work schedules, individualized work schedules or short-time work schedules.

The maximum legal working time cannot exceed 48 hours per week, including overtime. By way of exception, the duration of working time including overtime can be extended beyond 48 hours

per week, provided that the average working hours, calculated over a reference period of 4 calendar months, does not exceed 48 hours per week.

Overtime work cannot be carried out without the employee's consent, except in the case of force majeure or for urgent work aimed at preventing accidents or removing the consequences of an accident.

Overtime work is compensated by paid free hours in the next 90 calendar days after it is performed. If compensation through paid free hours is not possible within the previously stipulated term, in the following month, the overtime work will be paid to the employee by adding an increase to the salary corresponding to its duration. This increase for overtime work is established through negotiation, within the collective labor contract or, as the case may be, of the individual labor contract, and cannot be less than 75% of the basic salary.

5. Minimum paid leave

In cases where the daily duration of working time is more than 6 hours, employees have the right to a **meal break** and other breaks, under the conditions established by the applicable collective labor agreement or by internal regulations. Breaks will not be included in the normal daily duration of working time (article 134 of the Romanian Labor Code).

Employees have the right between two working days to a **rest** that cannot be less than 12 consecutive hours. By way of exception, in the case of shift work, this rest cannot be less than 8 hours between shifts (article 135 of the Romanian Labor Code).

The daily working time of 12 hours will be followed by a rest period of 24 hours (article 115 of the Romanian Labor Code).

Weekly rest is 48 consecutive hours, usually on Saturdays and Sundays (article 137 of the Romanian Labor Code).

6. Occupational safety laws

In Romania, Law no. 319/2006, as further amended, on occupational safety and health establishes general principles regarding the prevention of occupational risks, the protection of workers' health and safety, the elimination of risk factors and accidents, information, consultation, balanced participation

7. Maternity Protection provisions

Employers must observe the following maternity protection provisions (stipulated by GEO no. 96/2003):

- to adopt the necessary measures, so as to: a) prevent the exposure of pregnant or nursing employees to risks that may affect their health and safety; b) pregnant or nursing employees should not be forced to perform work harmful to their health or state of pregnancy or to the newborn child, as the case may be.
- to keep confidential the state of pregnancy of the employee and will not notify other employees except with her written consent and only in the interest of the smooth running of the work process, when the state of pregnancy is not visible.
- to grant pregnant employees a dispensation for prenatal consultations within the limit of a maximum of 16 hours per month,

under the law, if the investigations can be carried out only during working hours, without diminishing salary rights.

- to grant nursing employees, during the working hours, two breaks for breastfeeding of one hour each, until the child is one year old. These breaks also include the time needed to travel back and forth from the place where the child is. At the request of the mother, the nursing breaks will be replaced by the reduction of the normal duration of her working time by two hours daily. Allowances and the reduction of the normal duration of working time, granted for breastfeeding, are included in working time and do not reduce salary income and are fully supported from the employer's salary fund.

Also, for the protection of female employees health and that of the child, the Romanian law provides the following:

- after giving birth, female employees are required to take a minimum of 42 days of maternity leave, as part of pregnancy and maternity leave with a total duration of 126 days.

- based on the recommendation of the family doctor, the pregnant employee who cannot fulfill the normal working hours for reasons of health, hers or her fetus, has the right to reduce the normal working hours by a quarter, while maintaining the salary income, supported in full from the employer's salary fund, according to legal regulations.

- pregnant or nursing employees cannot be forced to work at night.

Last but not least, the employer cannot order the dismissal of its employees during maternity leave, and when determining the duration of annual leave, the periods related to maternity leave, paternity leave are considered periods of activity performed.

8. Protection of young people at work

Pursuant to Romanian Labor Code, Minors acquire the capacity to work (the possibility of employment) upon reaching the age of 16. The minor can enter into an employment contract as an employee upon reaching the age of 15, with the consent of the parents or legal representatives, for activities suitable to his physical development, skills and knowledge, if his health, development and training are not endangered professional.

Employment of persons under the age of 15 is prohibited.

Employment in hard, harmful or dangerous jobs can be done after reaching the age of 18.

Minors benefit from an additional holiday of 3 working days/year.

In the case of young people aged up to 18 years, the duration of working time is 6 hours per day and 30 hours per week, unlike adult employees employed full-time, in whose case the normal duration of working time is 8 hours per day and 40 hours per week. Minors benefit from a meal break of at least 30 minutes, if the daily working

time is more than 4 and a half hours.

Young people under the age of 18 cannot perform additional work or night work.

9. Anti-discrimination provisions

In Romania, Law no. 202/2002, as further amended, on equal opportunities and treatment between women and men regulates measures to promote equal opportunities and treatment between women and men, with a view to eliminating all forms of discrimination based on sex, in all spheres of public life in Romania. Specific legal provisions are included in the Romanian Labor Code also.

10. Reporting obligations to authorities when taking up work

Citizens of the European Union who wish to stay for more than 3 months in Romania must register their residence at the territorial unit of the General Inspectorate for Immigration (IGI) in the county where they live, in order to obtain a registration certificate, based on the submission of a bunch of documents, depending on the purpose of the stay in Romania.

According to the applicable law, European Union citizens in one of the following situations have the right to reside in Romania for a period longer than 3 months:

- have the status of a worker on the territory of Romania (i.e. carry out dependent activities (e.g. based on an employment contract) or independent activities (e.g. administrator within a Romanian company);
- have means of maintenance for themselves and their family members, usually at least at the level of the minimum guaranteed income in Romania, and health insurance;
- are enrolled in an institution in Romania, accredited under the law, having as its main activity the carrying out of educational or professional training activities, have health insurance and assure the competent authorities, through a declaration on their own responsibility or through any other means, that they have means of maintenance for themselves and their family members, usually at least at the level of the minimum guaranteed income in Romania;
- are family members of a citizen of the European Union who meets one of the conditions provided above or of a Romanian citizen with domicile or residence in Romania.

Failure to fulfil any of the obligations to request the issuance of the registration certificate within 3 months from the date of entry into Romania constitutes a contravention and is sanctioned with a fine from 25 lei to 50 lei.

11. Miscellaneous

Due to the lack of express legal provisions under Romanian law, it is advisable for the employer which is willing to offer such flexible work, to conclude a detailed agreement supplementing or amending the existing employee's labor contract and defining the conditions of the planned workation; such agreement should be considered the applicable law for the parties.

Nevertheless, if the employer allows employees to work remotely abroad, the company should consider also possible implications that

may result from this, in relation to the distinct situation of each employee, especially regarding:

- income tax (where is due and a proper assessment for the avoidance of double taxation is also due);

- social security system applicability: Member States of the European Union (plus Norway, Iceland, Liechtenstein, Switzerland and the United Kingdom) have been invited to sign a Framework Agreement in the field of social security which will give employers and employees the option of opting to remain in the social security system of the country where the employer is registered when employees work teleworking from the country of residence, for a period of time less than 50% of the total activity (compared to the provisions prior to the Agreement that mentioned a maximum period of 25%). The framework agreement is based on the provisions of Article 16(1) of Regulation 883/2004/EC on the

coordination of social security systems and it will be applied from the moment of its signing (starting with the 1st of July 2023 and any time after)

- the risk of generating a permanent establishment abroad: from an extensive law perspective, teleworking from abroad may, under certain conditions, give rise to additional obligations for the employer, and another important aspect to consider is the risk of permanent establishment abroad

- obligations for fiscal declarations or reporting

Feel free to contact us if you have any questions about Romanian labor law.

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