

Romania - alternative working structures in the wake of COVID-19

The new Coronavirus (COVID-19) continues to be a cause of concern for authorities and the population at large – with its rapid dissemination and high mortality rate, it has become clear relatively fast that ordinary measures will not suffice to limit the spread of this virus. With around 30 confirmed cases, Romania does not currently face a COVID crisis. However, to limit the risk of further spread of the virus, on 9 March 2020 the Centre for Emergency Situations enacted a series of preventive measures, including suspension of schools (both in the public and private sector) until 22 March (with the possibility of extension), cancellation of all public gatherings/events etc. These measures (in particular the closure of schools) raise questions for both employers and employees alike on how to manage business continuity needs while putting in place flexible working alternatives to allow employees to also care for their (minor) children.

In this context, employers need to consider implementing such more flexible working alternatives, such as remote work. Obviously, not all industries e.g. physical labour-intensive processes/client-facing activities such as retailers/sales, transport operations etc are prone to such alternatives, and there may be other structures or measures that may need to be taken to address these specificities.

Where remote working can be implemented, employers may consider one of the following alternatives regulated by law: working from home or tele-working.

→ As a general remark, employers are responsible, inter alia, also for the health and safety of their employees while at work. The law allows employers to unilaterally modify the place and type of work of their employees in force majeure cases or as a measure of protection of the employees. Ideally, however – if feasible in practice – these changes would be mutually agreed with the employees.

→ Working from home simply means that employees will continue performing the tasks associated with their role/position from home. To implement this structure, and if a mutual addendum is not possible, employers will need to issue individual decisions (i) setting out expressly the fact that the employees will perform their work from home; (ii) providing the period in which such alternative working arrangement is to be implemented; and (iii) indicating the intervals and manner in which employers may check-in on their employees and exercise control over the work-product of the employee.

→ Teleworking is another alternative for remote working, which makes use of technological advances and IT&C. To implement ‘teleworking’ as an alternative working structure, employers must set out (whether in an individual decision or in an addendum to the employment agreement): (i) the fact that employees will tele-work; (ii) the period for which work shall be performed in a ‘tele-working’ structure; (iii) the place(s) where the employees are to perform tele-work; (iv) the employer’s ability to verify the activity or the tele-worker and the method of such verification; (v) the employees’ obligation to record their working time etc.

→ In principle, changes to the place of work (as an essential element of the employment contract) should be registered in the Electronic Registry of Employees.

Where such remote working alternatives cannot be implemented in full, employers may also consider:

→ implementing other flexible working structures, such as working in shifts or over personalised working schedules (e.g. to allow parents to substitute each other over the course of the day and ensure care and protection of minor children);

→ where possible, allowing employees to take holiday or even unpaid leave to deal with such constraints.

For all employers where effective presence at the work place is a business necessity, the following recommendations apply:

- ensure that working spaces and work equipment/facilities are periodically disinfected;
- ensure that employees have adequate cleaning materials;
- consider alternative transport arrangements (e.g. picking up/dropping off from designated locations) for employees so as to limit public transport interaction;
- consider a combination of remote working, working in shifts and on-location working, to reduce crowding and close-proximity working;
- implement appropriate and effective communication plans with employees, and require employees to immediately report any associated symptoms to the company's HR →Department;
- ensure that employees are trained on the use of sanitary materials, work protection equipment, identifying and reporting symptoms etc;
- ensure that the privacy and confidentiality of health data related to COVID-infections are respected, while considering the collective interests of the workforce;
- limit personal interactions where possible e.g. holding meetings over video-conferencing systems.

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