

CMS: Romania reinforces short-time work during pandemic

Romania has approved the Kurzarbeit Law (No. 58/2021), which reinforces the terms and conditions of the existing short-time work scheme (known as “Kurzarbeit” in Germany) to help companies cope with the economic challenges of the pandemic and to prevent massive layoffs.

The Law, which was published on 5 April 2021 in the Official Gazette, will go into force three days later.

Romania introduced the Kurzarbeit scheme in mid-2020 with the adoption of Government Emergency Ordinance No. 132/2020 (**GEO 132**) on support measures for employees and employers in the context of the spread of COVID-19 and the stimulation of employment growth. This ordinance was amended in December 2020 with Government Emergency Ordinance No. 211/2020 (**GEO 211**) on the prolongation of enforcement of social protection measures already adopted in the context of COVID-19.

The Kurzarbeit Law introduces changes and clarifications on the application of short-time work in reference to provisions found in GEO 211.

Short-time work for up to 80% of working time

Employers have the option to unilaterally reduce the working time of their employees by up to 80% for daily, weekly or monthly work as provided for in employment agreements. (Initially, a maximum 50% reduction was set forth under GEO 132). The measure may be adopted during a state of emergency, alert or siege and can extend for three months after the termination of the particular state of emergency, alert or siege.

The reduced working schedule must cover at least five consecutive working days out of 30 calendar days, calculated from the first day of the scheme's enforcement. Under the Kurzarbeit Law, the reduced working schedule will also apply to work shifts and uneven work schedules. The employer can amend the work schedule when necessary, provided that such a decision is based on justifiable reasons.

New categories of individuals benefiting from short-time work

The Kurzarbeit scheme may also apply to apprentices (*ucenici*), provided that the employer ensures that each apprentice has access to theoretical and practical professional training under the relevant professional standard.

Approval of employee reps or unions required

The short-time work schedule must be approved by the trade union representative at the employer's level or, in the absence of a trade union, with employee representatives. Approval is also required for any changes to the work schedule while the short-time work scheme is underway. (Previously, only prior consultation with the relevant trade union or employee representatives was mandatory).

New communication rules

An employer's decision to implement a short-time work schedule must be communicated to the concerned employees at least five days before the measure comes into force.

The following changes to the work schedule can be communicated 24 hours before the measure goes into force:

→ additional employees are added to the workforce due to an increase in business activities; or

→ an employee is replaced due to a worker's inability to perform work according to the work schedule.

These exemptions were newly introduced to the Kurzarbeit Law.

Indemnity

An employee is entitled to an allowance of 75% of his monthly base salary corresponding to the reduced work schedule.

The employer will be reimbursed from the unemployment insurance budget to cover the additional 75% allowance, but will need to meet the following criteria:

- the short-time work scheme concerns at least 10% of the total number of employees;
- the reduction of business activities is justified by a reduction of at least 10% in turnover during the month prior to the implementation of the short-time scheme, or in the previous month by reference to the same month of the previous year. In case of companies incorporated between 1 January and 15 March 2020 that hire at least one employee, the reduction of the turnover will be referenced to the month prior to the implementation of the scheme in the same financial year.

The employer can supplement the indemnity with the difference between the gross base salary provided in the individual employment agreement and the gross base salary due for the time worked. This addition will be paid from the employer's budget if the funds are available.

Prohibitions

During the implementation of short-time work under the Kurzarbeit scheme, the employer cannot do the following:

- hire employees who perform identical or similar work, or subcontract activities carried out by the employees whose work was reduced. The employer also cannot hire or subcontract employees at the level of subsidiaries, branches or other secondary offices in the meaning of Law No. 31/1990 on companies, as further amended and supplemented;
- request affected employees to perform overtime;
- place an employee under technical unemployment in line with provisions of the Romanian Labour Code; and
- order collective dismissals;
- receive other financial aid in the context of COVID-19 for the same employee.

According to a newly introduced exemption, hiring for the purpose of replacing an employee whose work schedule was reduced under the Kurzarbeit will be allowed if employees are terminated for the following reasons:

- by law;
- disciplinary issues or professional inadequacy or other causes related to the employee;
- the employee resigned.

If the employees targeted by this measure are performing work outside the agreed upon short-time schedule, the employer may be sanctioned with a fine of RON 20,000 (EUR 4,160) per employee but not exceeding RON 200,000 (EUR 41,600) in total.

Reimbursement rules

The reimbursement rules as set down in Government Decision No. 719/2020 for approval of reimbursement and payment procedures for financial aid regulated under GEO 132 will be amended 30 days after the entry into force of the Kurzarbeit Law.

For more information on this law or general advice on employment in Romania, contact your regular CMS advisor or local CMS experts **Horia Draghici**, **Ruxandra Georgescu** and **Alexandra Voinia**.