

Recruiting staff in Romania and background checks: What employers need to know



Recruiting staff in Romania may seem daunting to employers, specifically to those foreign-owned, unfamiliar with Romanian employment legislation. Nevertheless, if certain basic rules are determined and further observed, the recruiting procedure should run smooth and clean from a legal perspective.

From the outset, when hiring process is launched within a company, employers most often want to know and consider the background of the applicants in order to make the proper selection and take a final decision.

Mandatory medical checks

When the parties decide to go forward and conclude an employment agreement, it is mandatory for the candidate to provide a medical certificate proving that he/she is fit to be hired on a specific position and perform the related activities prior to the hiring date. Lack of the medical certificate upon hiring of an employee leads to the nullity of the employment agreement.

As regards the controversial drug testing, such is not required by law, but is not prohibited and may be performed with employee's consent.

What information may be checked?

Apart from the above medical check, the Romanian legislation is somewhat deficient, as well as restrictive when it comes to providing the legal procedure for recruiting staff. As a rule, no other general background checks than the prior check of the candidate's professional and personal abilities are compulsory for candidates, except for specific situations regulated by special legislation (for example, in some professions, candidates are required to provide a police clearance certificate).

Otherwise, the information requested by the employer to the candidates during the prior background check has the only purpose to determine the capacity to hold the respective job position and the professional abilities of the candidate.

References from former employers

References from former employers are expressly permitted by the law, however, the information requested to the former employer must be limited to the employee's job activities and the duration of his/her employment. On top of that, the employer must inform the candidate before conducting any reference checks with former

employers.

Other legal guideline is not provided for the recruiting of staff, therefore, the employers must make-do with the available legal rules and cooperation of the candidates for the aspects that are not expressly requested under the law.

Discrimination issues

As regards discrimination issues that may arise during the recruiting process, the relevant enactments provide that pregnancy tests are expressly prohibited to be requested upon hiring. The more so, requesting a candidate to sign an engagement that she will not get pregnant or will not give birth during the employment period is also expressly prohibited and considered as discriminatory practice.

Exceptions to the above rules are to be found in cases in which a specific job position is prohibited to pregnant or nursing women due to the nature and particular conditions of the respective work.

Moreover, non-discrimination rule related to any of the protected criteria (e.g., race, nationality, gender, religion, age, etc.) is requested under the law in connection to the hiring conditions, recruitment criteria, selection of the candidates, as well as access to all forms and levels of professional orientation, training and development.

In such a context, the recruitment announcement should be carefully drafted and should establish a selection of candidates based on professional criteria which are deemed to be objective and decisive requirements for occupying a certain position.

Recruiting foreign staff

In today's context of the global shortage of labor force the employers are more and more interested in hiring immigrant staff to compensate their labor deficit. In such case, the employers should know from the outset that not only the prospective foreign employees will be subject to certain mandatory background checks, but also the employer itself will be subject to a background control from the Romanian immigration authorities in order to be able to hire the respective foreign citizen.

While the legal rules on recruiting local staff are scarce, in case of foreign citizens the law is quite extensive and provides a cumbersome and strict procedure to be followed. Moreover, a prerequisite to hire foreign employees is that the annual quota on newly admitted workers on the labor market, as established at National level, not to be depleted.

Another important mention is that European Union/European Economic Area/Swiss Confederation Member State citizens are not considered foreigners and benefit from the free movement of workers within the European Union principle.

Employment Policy Guidelines to Member States of European Union

Recently, the European Union Council issued the Decision 2020/1512 on guidelines for the employment policies of the Member States, mainly aiming to develop a coordinated strategy for the Member States for employment, to promote a skilled, trained and adaptable workforce, as well as to combat social exclusion and discrimination.

Although having a more abstract frame, the guidelines should be taken into account by Member States in their employment policies and reform programmes. Part of the directory lines to be taken into consideration refer to raising the demand for labour, including by reducing the barriers that businesses face in hiring people, as well as to promote equal opportunities for all, and in particular for groups that are under-represented in the labour market, to

ensure equal treatment regarding employment, being also encouraged that the gender employment and pay gaps to be tackled.