



# GUIDE TO GOING GLOBAL EMPLOYMENT

*Romania*



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## INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

### GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

### EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

To learn more about DLA Piper's global Employment practice, visit [www.dlapiper.com](http://www.dlapiper.com) or contact:

Brian Kaplan  
Co-Chair, Global Employment practice  
[brian.kaplan@dlapiper.com](mailto:brian.kaplan@dlapiper.com)

Ute Krudewagen  
Co-chair, International Employment practice  
[ute.krudewagen@dlapiper.com](mailto:ute.krudewagen@dlapiper.com)

Pilar Menor  
Co-Chair, Global Employment practice  
[pilar.menor@dlapiper.com](mailto:pilar.menor@dlapiper.com)

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## ROMANIA



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### LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Member of the European Union (EU), so required to implement relevant EU directives. The official currency is the Romanian leu (RON). The official language is Romanian.

### CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Typically, foreign entities set up a Romanian presence in order to conduct business in Romania, which may engage employees under individual employment agreements, but which are required to have registered with both the fiscal authorities as well as the labor authorities which handle all employment- and payroll-related registrations.

Although it is not the typical scenario envisaged by the Romanian Labor Code, and it might trigger some practical difficulties (mainly from a payroll and tax perspective), there is no express legal provision prohibiting foreign companies without a Romanian presence from executing individual employment agreements directly with Romanian individuals. Thus, a foreign entity may engage staff in Romania, subject to business, corporate and tax considerations.

### PRE-HIRE CHECKS

#### Required

A request for a medical certificate or check may only be made for the purpose of ascertaining the applicant's ability to perform the work in question, and the cost of the medical check must be met by the employer. Immigration compliance also must be considered where relevant.

#### Permissible

Reference checks with respect to an applicant's length of employment and work performed for former employers are common and permissible, although the applicant should be informed in advance. Processing any data regarding criminal records is generally prohibited.

## IMMIGRATION

Nationals of the EU, the European Economic Area (EEA) and Switzerland have the right to reside and work in Romania, subject to observance of applicable legal conditions and typically subject to obtaining a registration certificate for stays of longer than 3 months. Non-EU, non-Swiss and non-EEA nationals must comply with the immigration-related requirements for entry, stay and work in Romania, with the company employing them being under various procedural obligations related to engaging foreign individuals to work in Romania.

## HIRING OPTIONS

### Employee

Indefinite as a rule, fixed-term (only in the cases expressly provided by the law and subject to specific legal conditions), full-time or part-time. Part-time and fixed-term employees have the right not to be discriminated against on the basis of such status.

### Independent contractor

Engagement of independent contractors may expose the employer to the risk of the arrangement being reclassified as an employment relationship, with the possibility of it being construed that the parties have attempted to circumvent applicable employment law provisions.

### Agency worker

Use of temporary employees via a temporary work agency is permitted only for executing a temporary and specific assignment, the maximum duration of which, including all successive renewals, is 36 months. Temporary employees are hired by the temporary work agency under a temporary individual employment agreement.

Employers may also have an individual assigned or seconded to them by another employer, provided that all applicable legal conditions are observed and only for a limited period of time.

## EMPLOYMENT CONTRACTS & POLICIES

### Employment contracts

Execution of an individual employment agreement in writing in Romanian and registration of the agreement with the general registry of employees, which is an electronic registry set up by each employer using the platform made available by the authorities and periodically communicated to the relevant labor authorities.

### Probationary periods

Only 1 probationary period may be used per individual employment agreement, with certain exceptions. As a rule, the maximum duration is 90 calendar days for executive-level positions and 120 calendar days for management-level positions. By way of exception, among others, shorter probationary periods are applicable to employees working under a fixed-term agreement and temporary employees, the exact duration depending on the term of their employment and their position.

## Policies

Employers are required to implement internal regulations as an employee handbook, in consultation with the relevant employee representative body. The internal regulations must include certain minimum provisions, such as rules on health and safety at work, disciplinary-related rules, a grievance procedure and employee professional evaluation criteria and procedures. Employers may also unilaterally implement other work-related rules, such as dress code or employee-specific obligations, via their internal regulations or as separate internal policies or procedures. As of May 2019, employers are required to implement specific policies on equal treatment and workplace anti-harassment, including (i) an internal policy on zero tolerance of workplace harassment and outlining anti-harassment actions and (ii) an internal policy on the steps which will be taken to facilitate immediate notification to the competent public authorities in the event that the employer is ever notified of a breach of equal treatment legislation.

## Third-party approval

As a general rule, there is no requirement to lodge employment policies with or receive approval from any third party. The implementation of internal regulations is only subject to consultation with the relevant employee representative body, and there is no need to reach agreement with them or secure consent.

## LANGUAGE REQUIREMENTS

There is a statutory requirement to execute individual employment agreements in Romanian; a bilingual format, including a Romanian language version, is also possible. It is not a statutory requirement for internal regulations or policies to be in Romanian, but this is strongly recommended.

## WORKING TIME, TIME OFF WORK & MINIMUM WAGE

### Employees entitled to minimum employment rights

All, in line with the Romanian labor legislation.

### Working hours

Weekly working time for full-time employees is 40 hours per week. As a rule, this is evenly distributed, amounting to 8 hours per day for 5 days (generally Monday to Friday). Weekly rest is 48 consecutive hours, usually Saturday and Sunday. By law, maximum working time cannot exceed 48 hours per week, including overtime. No opt-out is possible; however, there are certain exceptions under which the working time may exceed 48 hours per week.

There are specific rules on rest breaks, weekly rest, night work and rest periods between shifts.

### Overtime

Work performed outside of normal working time is considered overtime. Overtime performed in normal working days must be compensated with:

- Paid time off granted within 90 calendar days after the overtime has been performed or

- If paid time off is not possible within this legal deadline, payment of additional monetary compensation (in addition to the monthly salary due for the respective month) of at least 75 percent of the hourly base salary for each overtime hour

If overtime is performed during weekly rest periods and/or days of legal/public holiday, additional compensation must be paid on top of the overtime compensation.

## Wages

From January 1, 2022, employees can only be paid the minimum gross base salary for a maximum of 24 months. When this period expires, employers will be required to pay the respective employees a higher salary. These new provisions are also applicable for ongoing individual employment agreements entered into prior to the change. The maximum 24 month period is calculated as of January 1, 2022.

As of January 1, 2023, the generally applicable minimum gross base monthly salary at the national level is set at RON3,000 (approximately EUR610) for employees working full-time hours.

Exceptionally, for the period between January 1, 2023 and December 31, 2028, and only for the construction sector, the minimum base monthly gross salary at the national level is RON4,000 (approximately EUR820). Since June 1, 2022 and until December 31, 2028, for the agricultural sector and food industry, the minimum gross base salary is established at RON3,000 (EUR610), which applies for certain fields of activity in these sectors provided by law along with some tax facilities.

## Vacation

The minimum vacation is 20 working days; in practice, based on the old legislation, employees' expectation is 21 working days. This does not include the 15 public holidays. Employees who practice Christianity benefit from the following public holidays, which are included within the 15 public holidays: Good Friday (the last day of Friday before Easter), the first and second day of Easter, and the first and second day of Pentecost. Time off occurs on the date when these are celebrated according to the worship they belong to, and employees recover the extra days off based on a schedule established by their employer.

## Sick leave & pay

Generally, employees may take sick leave up to 183 days per year, based on a medical certificate and for the duration specified in the certificate, depending on the type of illness. As a rule, the first 5 days of sick leave are paid by the employer, and the following days are paid from the health insurance budget. Sick pay generally is 75 percent of the average salary of the employee for the last 6 months out of a 12-month representative insurance period. The basis for calculating the contribution is capped at the threshold of 12 minimum monthly gross salaries established at national level, which is currently approximately EUR7,400.

## Maternity/parental leave & pay

Female employees benefit from 126 days of maternity leave, which may be split equally or otherwise between the pre- and post-birth period (subject to a minimum 42 calendar days' leave which must be taken after the birth).

Male employees benefit from 10 working days of paternal leave, to be taken in the first 8 weeks after the child's birth, to enable effective participation in the care of the newborn. This may be extended to a total of 15 working

days, subject to certain conditions, if the father has undertaken a childcare course (irrespective of when this was completed).

In addition, either parent is entitled to take child-raising leave up until the child is 2 years old (or 3 years old in the case of a child with disabilities), subject to the requirement that at least 1 month (to be amended to 2 months) of the leave must be taken by the other parent.

## Other leave/time off work

Employees may be entitled to other types of leaves or time off, such as (i) vocational training leave, (ii) leave for taking care of a sick child, (iii) leave for caring of an oncologic patient, (iv) carers' leave for providing care or personal support to a relative or to an individual living in the same household as a result of a severe medical condition, (v) special absence from work in case of unforeseen situations determined by a family emergency situation in case of illness or accident, making the employee's immediate presence indispensable, or (vi) time off for blood donation, among others.

## DISCRIMINATION & HARASSMENT

Direct and indirect discrimination is prohibited, along with victimization and harassment, including sexual harassment, psychological harassment and moral harassment. Employers have an obligation to include provisions prohibiting discrimination in their internal regulations, as well as corresponding disciplinary sanctions.

The main characteristics protected from unlawful discrimination and harassment include race, nationality, ethnic background, language, religion, social category, beliefs, age, disability, sex or sexual orientation, among others.

## WHISTLEBLOWING

On December 22, 2022, the law on the protection of whistleblowers in a public interest entered into force, transposing the EU Directive 2019/1937 on the protection of persons who report breaches of Union law. This is now the general framework for the protection of reporting persons who are aware of information (including reasonable suspicions) on breaches of the law which are likely to occur or have occurred in a work-related context.

## BENEFITS & PENSIONS

Currently, there are no general benefits applicable by law to all employees, but there are some that apply only in specific cases, such as employees working under a mobility clause.

Private pensions are not typically provided in practice as an employment benefit, but the employer has the opportunity to grant to its employees contributions to a voluntary pension fund which is non-taxable within the limit of EUR400/employee/year. By law, all employees are insured under the state statutory pension system and social security (ie, pension) contributions are currently made by employees provided they work in normal conditions. For employees who work in particular or special conditions, there is an additional contribution to the pension fund, paid by the employer.



On February 7, 2020, Romania implemented a new law on occupational retirement benefits which transposed the EU Directive 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORP).

On July 19, 2021, the template individual employment agreement regulated by the Ministry of Labor was amended to include an employer's obligation to inform the employee about their obligation to adhere to a privately managed pension fund, in accordance with the special legislation. For clarity, the new law only adds the requirement to inform employees of their legal obligation (if they have such legal obligation) to adhere to a privately managed pension fund.

In addition, the newly regulated template individual employment agreement (in force as of December 9, 2022) provides for the employer's right to pay the additional contributions to the employee's voluntary pension or occupational pension in accordance with the law, which is not mandated.

## DATA PRIVACY

Employees must be informed of personal data processing – and in certain limited cases, must give consent.

Since May 2018, Romania has been subject to the General Data Protection Regulation (GDPR), which introduced significant new obligations and onerous sanctions for employers. Under the GDPR, specific rules apply to any personal data transferred outside the European Economic Area aimed at ensuring that appropriate safeguards are provided for the transferred personal data and that enforceable data subject rights and effective legal remedies for data subjects are available.

Monitoring of employees, including email and internet use, may be performed under very specific circumstances, provided that the legal provisions which impose restrictions on interference with the protection of private life, data privacy and electronic communications are complied with.

## RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Automatic transfer under the EU Acquired Rights Directive and Romanian Transfer of Undertaking Law No. 67 /2006 (TUPE) in asset deals typically involving a business or undertaking sale. This entails transfer of the rights and obligations arising from the transferred employees' individual employment agreements and the applicable collective bargaining agreement – for its duration – in force on the transfer date. There are restrictions on changing terms and conditions of employment following a transfer. There is a duty to inform and, in certain cases, to consult with the employee representative bodies for both the transferor and the transferee. Any dismissal connected to the transfer is prohibited.

## EMPLOYEE REPRESENTATION

The main employee representative bodies are:

- Employee-elected representatives
- Trade unions

Works councils are not expressly regulated unless there is a European works council.

Collective bargaining agreements may be executed:

- At the company level (negotiated between the employer and the competent social dialogue partner – which, under the new law, may be the representative trade union(s), a trade union federation in certain strict conditions, all non-representative trade unions or employees' representatives)
- At the group-of-companies level
- At the sector (ie, industry) level. In this case, an employer must be a signatory to such an agreement in order for it to apply to its employees, although extension to the entire sector is possible in certain circumstances, or
- At the national level. In this case, the applicability is generally limited to the company's part of the employer organization that negotiated the agreement, with the possibility of extending the applicability nationwide based on government decision.

## TERMINATION

### Grounds

Termination implemented by the employer is permissible:

- On the following grounds only:
  - For reasons not related to the individual employee (ie, redundancy)
  - For reasons related to the individual employee, namely:
    - Poor performance
    - Serious or repeated misconduct (ie, disciplinary)
    - Medical unfitness
    - Arrest of the employee for a period exceeding 30 days
- Subject to strictly complying with the procedure provided by law

A simplified form of termination is also possible at the initiative of either party, during or at the end of the probationary period, exclusively on the basis of a written notice, with no notice period nor termination grounds being required to be included therein.

### Employees subject to termination laws

Termination rules equally apply to all employees with no seniority threshold required by law.

## Restricted or prohibited terminations

A dismissal may never be implemented on discriminatory grounds or for exercising the right to strike or trade union rights.

A dismissal may not be implemented, for example, during temporary work incapacity (ie, medical leave), during pregnancy (provided that the employer acknowledged the pregnancy before issuing the dismissal decision), during maternity leave or child-raising leave or during vacation or annual leave or during paternal leave, carers' leave or special absence from work.

## Third-party approval for termination/termination documents

There are no third-party approvals expressly required by law; however, there is a requirement to involve certain labor authorities during a mass layoff process or, in specific cases, during a poor-performance or medical unfitness dismissal, including an obligation to provide them with relevant termination-related documents.

## Mass layoff rules

Strict information and consultation rules apply where, over a 30-calendar-day period, a certain number of employees are to be made redundant. The thresholds depend on the employer's total headcount and previous terminations. For example, the rules apply where at least 10 employees are to be dismissed if the company employs between 21 and 99 employees. The employer must also notify the territorial labor inspectorate and the workforce occupancy agency at set times during the redundancy process.

## Notice

The minimum notice period provided by the law in case of dismissal is 20 working days. Longer notice periods may be agreed upon and set out in the individual employment agreement. By law, notice is not required for disciplinary terminations, nor in case of termination due to the employee being under arrest for a period exceeding 30 days.

## Statutory right to pay in lieu of notice or garden leave

No express regulation under Romanian employment law. However, the Romanian High Court of Cassation and Justice has ruled that payment in lieu of notice is not permitted as it essentially breaches an employee's fundamental legal right to receive notice.

## Severance

There is no minimum level of severance payment expressly provided by the law. However, in practice, employers may decide to make a severance payment.

## POST-TERMINATION RESTRAINTS

### Non-competes

The parties may negotiate a post-termination non-compete clause prohibiting the employee from performing an activity competing with the one performed for their (previous) employer.

In order to be valid, a non-compete clause must specify certain minimum content as required by the Romanian Labor Code:

- The prohibited activities
- The amount of the non-competition indemnity
- The duration of the prohibition
- The third parties for which the employee cannot perform the prohibited activities
- The prohibited territory

As a non-compete restraint represents an exception from the principle of freedom of work, failure to comply with the legal conditions for implementing such a clause may render the clause void.

## Customer non-solicits

Not expressly regulated by the law. May arguably be included within the scope of a non-compete clause.

## Employee non-solicits

Not expressly regulated by the law. May arguably be included within the scope of a non-compete clause.

## WAIVERS

Under the Romanian Labor Code, employees cannot waive their rights recognized by the law, and any transaction with the purpose of waiving or limiting such rights will be null and void.

## REMEDIES

### Discrimination

Uncapped compensation, based on the claimant's financial and moral loss, as proven in court. In addition, administrative and criminal liabilities may also be triggered for the employer.

### Unfair dismissal

Failure to comply with dismissal requirements can lead to the court:

- Annuling the dismissal decision
- Ordering re-instatement, if requested by the employee

- Ordering payment of salary rights between the dismissal and the court decision which the employee would have benefited from if not unlawfully dismissed
- Ordering payment of damages (including moral damages), if proven by the employee
- Ordering payment of trial expenses incurred by the employee, such as legal assistance expenses

Depending on the factual circumstances, other claims – such as discrimination or criminal complaints – cannot be excluded.

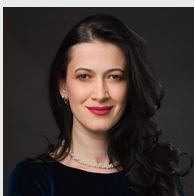
## Failure to inform & consult

Uncapped compensation, based on the claimant's financial and moral loss, as proven in court. This also exposes the employer to administrative fines up to approximately EUR 10,000.

## CRIMINAL SANCTIONS

Infringement of health and safety rules may lead to criminal sanctions where human life has potentially been put in jeopardy. Criminal liability is also triggered, for example, in cases of repeated breach of the obligation to pay minimum salary, repeated refusal to permit labor inspectors access to any of the company's locations or refusal to provide inspectors with requested documentation.

## KEY CONTACTS



### Monica Georgiadis

Partner

DLA Piper Romania

[monica.georgiadis@dlapiper.com](mailto:monica.georgiadis@dlapiper.com)

T: +40 372 155 812

[View bio](#)

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