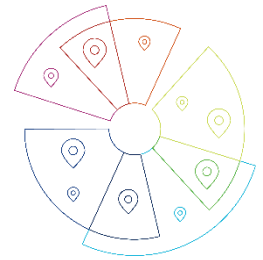


TAX NEWS

8/2023



Stimati parteneri,

Va transmitem mai jos mai multe modificari legislative ce au intrat in vigoare la sfarsitul lunii Mai 2023

1. Ordonanta de urgenta nr. 42/2023 pentru modificarea si completarea Legii nr. 367/2022 privind dialogul social si a Legii nr. 53/2003 - Codul muncii, in vigoare de la 25 mai 2023 si publicata in Monitorul Oficial, Partea I nr. 459 din 25 mai 2023

Iata principalele modificari aduse prin acest act normativ:

- Perioada in care persoana aleasa in organul de conducere este salarizata de organizatia sindicala, se consideravechime in munca, in conditiile legii. Pe durata in care persoana aleasa in organul de conducere este salarizata de organizatia sindicala, la notificarea acesteia, contractul sau individual de munca/raportul sau de serviciu se suspenda in conformitate cu prevederile art. 50 lit. e) din Legea nr. 53/2003 - Codul muncii, republicata, cu modificarile si completarile ulterioare, incepand cu data

Dear collaborators,

Below are several legislative changes that came into force at the end of May 2023

1. Emergency Ordinance no. 42/2023 for the modification and completion of Law no. 367/2022 on social dialogue and Law no. 53/2003 - Labour Code, in force since 25 May 2023 and published in the Official Gazette, Part I no. 459 of 25 May 2023

Here are the main changes brought by this normative act:

- The period during which the person elected to the governing body is paid by the trade union organisation is considered as seniority in employment, according to the law. During the period in which the person elected to the governing body is paid by the trade union, upon notification, his/her individual employment contract/service report shall be suspended in accordance with the provisions of Article 50 letter e) of Law no. 53/2003 - Labour Code, republished, with subsequent amendments and

notificarii. Pe durata suspendarii prevazute mai sus angajatorii sunt obligati sa pastreze functia si locul de munca, iar pe postul respectiv, angajatorul poate angaja, in conditiile legii, o alta persoana, numai pe durata determinata.

- Un patron/angajator poate fi afiliat la mai multe patronate, conform obiectelor de activitate inregistrate la registrul comertului, pentru protejarea intereselor specifice fiecarui obiect de activitate. In scopul constatarii reprezentativitatii la nivelul unui sector de negociere colectiva, un angajator poate fi reprezentat de un singur patronat sau de o singura federatie patronala, respectiv de o singura confederatie patronala.
- In ceea ce priveste durata initierea negocierii colective: angajatorul are 15 zile calendaristice, in loc de 5 zile, la dispozitie de la data declansarii procedurilor de negociere ca sa faca convocarea si sa organizeze prima sedinta de negociere;
- In toate contractele colective de munca incheiate la nivel de sector de negociere colectiva sau la nivel national, se insera clauze specifice aplicabile fiecarei categorii de IMM-uri; mai precis in toate contractele colective de munca incheiate la nivel de sector de negociere colectiva sau national, se introduc clauze specifice aplicabile fiecarei categorii de intreprinderi mici si mijlocii, nerespectarea acestei obligatii

additions, starting from the date of notification. During the above suspension, employers are obliged to keep the position and the job, and the employer may hire another person for the position in question, under the terms of the law, for a fixed term only.

- An employer may be affiliated to several employers' associations, according to the objects of activity registered in the trade register, in order to protect the specific interests of each object of activity. For the purposes of establishing representativeness in a collective bargaining sector, an employer may be represented by a single employers' association or employers' federation or employers' confederation.
- As regards the duration of the initiation of collective bargaining: the employer has 15 calendar days, instead of 5 days, from the date of the initiation of bargaining procedures to convene and organise the first bargaining meeting;
- In all collective agreements concluded at collective bargaining sector or national level, specific clauses applicable to each category of SMEs are inserted; more specifically, in all collective agreements concluded at collective bargaining sector or national level, specific clauses applicable to each category of small and medium-sized enterprises are inserted, failure to comply with this obligation will

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atragand neinregistrarea contractelor colective.se coreleaza prevederile aplicabile acordurilor colective similar celor aplicabile contractelor colective de munca;

- la negocierea CCM (Contract Colectiv de Munca) la nivel sectorial participa un reprezentant al organizatiilor patronale reprezentative ale IMM-urilor, indreptatite sa participe la negociere conform legii; refuzul scris de participare/semnare nu reprezinta insa motiv de neinregistrare a CCM-ului;
- In toate contractele colective de munca incheiate la nivel de sector de negociere colectiva sau national se introduc clauze specifice aplicabile fiecarei categorii de intreprinderi mici si mijlocii, denumite in continuare IMM, definite in conformitate cu Legea nr. 346/2004 privind stimularea infiintarii si dezvoltarii intreprinderilor mici si mijlocii, cu modificarile si completarile ulterioare.Aceasra situatie se aplica in conditiile in care in sectorul de negociere colectiva exista sau se infiinteaza IMM-uri. Daca in contractul colectiv de munca, incheiat la nivel de sector de negociere colectiva sau national, nu se introduc clauze specifice fiecarei categorii de IMM-uri, , intreprinderile mici si mijlocii, definite conform Legii nr. 346/2004 privind stimularea infiintarii si dezvoltarii intreprinderilor mici si mijlocii, cu modificarile si completarile ulterioare, nu au obligatia aplicarii

result in the collective agreements not being registered;

- a representative of the employers' organisations representing SMEs, which are entitled to participate in the negotiations by law, participates in the negotiation of the CLC (Collective Labor Contract) at sectoral level; however, written refusal to participate/sign does not constitute grounds for non-registration of the CLC;
- Specific clauses applicable to each category of small and medium-sized enterprises, hereinafter referred to as SMEs, defined in accordance with Law No 346/2004 on the stimulation of the establishment and development of small and medium-sized enterprises, as subsequently amended and supplemented, shall be included in all collective agreements concluded at collective bargaining sector or national level. If the collective agreement concluded at collective bargaining sector or national level does not contain specific clauses for each category of SMEs, small and medium-sized enterprises, as defined by Law No 346/2004 on the stimulation of the establishment and development of small and medium-sized enterprises, as subsequently amended and supplemented, are not obliged to apply that collective agreement.

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contractului colectiv de munca respectiv.

- Conflictele colective de munca se pot declansa daca angajatorul refuza sa adere la contractul/acordul colectiv de munca la nivel de sector de negociere colectiva, chiar si fara a participa la negocieri, fata de forma anterioara a reglementarii.
 - se introduce prevederea conform careia nulitatea unei clauze a contractului colectiv de munca negociate cu nerespectarea articolelor referitoare la negocierea colectiva in sistemul bugetar, poate fi ceruta de catre partile interesate, fie pe cale de actiune, fie pe cale de exceptie, respectiv poate fi invocata de catre instanta, din oficiu, pe durata existentei contractului colectiv de munca; nulitatea clauzelor contractuale se constata de catre instantele judecatoresti competente, la cererea partii interesate, fie pe cale de actiune, fie pe cale de exceptie;
 - In scopul asigurarii participarii la negocierea contractelor colective de munca la nivel de unitate, la nivel de grup de unitati, dupa caz, partea reprezentand angajatorul transmite in scris tuturor partilor indreptatite sa negocieze contractul colectiv de munca anuntul/invitatie privind intentia de incepere a negocierilor colective, cu cel putin 15 zile inainte de inceperea acestora. In cazul contractului colectiv de munca la nivel de sector de negociere colectiva,
- Collective labour disputes may be triggered if the employer refuses to adhere to the collective agreement/agreement at collective bargaining sector level, even without participating in the negotiations, compared to the previous form of the regulation.
 - provision is introduced to the effect that the nullity of a clause of the collective labour contract negotiated in breach of the articles on collective bargaining in the budgetary system may be requested by the parties concerned, either by way of an action or by way of exception, or may be invoked by the court, of its own motion, during the existence of the collective labour contract; the nullity of contractual clauses is established by the competent courts, at the request of the party concerned, either by way of an action or by way of exception;
 - In order to ensure participation in collective bargaining at the level of the unit or group of units, as the case may be, the party representing the employer shall send written notice/invitation of its intention to start collective bargaining to all parties entitled to negotiate the collective agreement at least 15 days before the start of collective bargaining. In the case of the collective agreement at collective bargaining sector level, the trade union federations entitled to

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federatiile sindicale indreptatite sa participe la negocieri vor notifica partii patronale indreptatite sa participe la negocieri lista cu unitatile in care au membri, in vederea invitarii angajatorilor din acele unitati care nu fac parte din federatiile patronale/patronatele indreptatite sa negocieze colectiv.

- toate organizatiile sindicale vor putea declansa conflictul colectiv de munca;
- pe toata durata participarii la greva, CIM-ul (Contract Individual de Munca) sau raportul de serviciu se va suspenda la initiativa angajatului, iar nu de drept, cum e acum; Pe perioada suspendarii se mentin doar drepturile de asigurari de sanatate.
- orice act de ingerinta al angajatorilor, patronilor sau al organizatiilor patronale, fie direct, fie prin reprezentantii sau membrii lor, in constituirea organizatiilor sindicale sau in exercitarea drepturilor lor va fi sanctionat cu amenda de la 20.000 - 25.000 de lei;
- refuzul nejustificat al partilor semnatare de inregistrare a contractelor colective de munca, cu amenda de la 5.000 lei la 10.000 lei, pentru fiecare parte care refuza inregistrarea;
- orice interventie din partea autoritatilor publice, a angajatorilor si a organizatiilor acestora in alegerea reprezentantilor

participate in the negotiations shall notify the employers' side entitled to participate in the negotiations of the list of establishments in which they have members, with a view to inviting the employers in those establishments which are not members of the employers' federations/management bodies entitled to bargain collectively.

- all trade union organisations will be able to initiate collective bargaining;
- for the duration of participation in the strike, the IEC (Individual Employment Contract) or employment relationship will be suspended at the initiative of the employee, and not by right, as it is now; during the suspension period, only health insurance rights will be maintained.
- any act of interference by employers, employers or employers' organisations, either directly or through their representatives or members, in the establishment of trade union organisations or in the exercise of their rights shall be punishable by a fine of 20,000 to 25,000 lei;
- the unjustified refusal of the signatory parties to register collective labour agreements, with a fine of 5,000 lei to 10,000 lei for each party refusing registration;
- any interference on the part of public authorities, employers and their organisations in the election of employee/worker representatives or in preventing such elections from

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angajatilor/lucratorilor ori in
impiedicarea desfasurarii acestor
alegeri va fi sanctionata cu amenda de
la 30.000 la 50.000 de lei.

taking place shall be punishable by a
fine of 30,000 to 50,000 lei.

**Modificari aduse Codului Muncii, OUG
42/2023 prevede urmatoarele modificarii:**

- plata zilelor de concediu de ingrijitor;
- corelarea cu noua lege a dialogului social in privinta obligativitatii negocierii colective angajatorilor cu *cel putin 10 angajati, in loc de 21*; Obligatia de convocare si de organizare a primei sedinte de negociere, atunci cand este declansata procedura de negociere colectiva, apartine exclusiv angajatorului.
- In vederea promovarii solutionarii amiabile si cu celeritate a conflictelor individuale de munca, la incheierea contractului individual de munca sau pe parcursul executarii acestuia, partile pot cuprinde in contract o clauza prin care se stabileste ca orice conflict individual de munca se solutioneaza pe cale amiabila, prin procedura concilierii. In cazul in care partile au incheiat numai o intelegere partiala, orice parte se poate adresa instantei competente, in vederea solutionarii in totalitate a conflictului individual de munca.
- Stabilirea competentei tribunalului ca instanta competenta pentru judecarea conflictelor individuale si colective de munca, dupa ce din noua lege a

**Amendments to the Labour Code, GEO
42/2023 provides for the following
changes:**

- Payment of caretaker's leave days;
- correlation with the new law on social dialogue regarding the obligation of collective bargaining for employers with at least 10 employees, instead of 21; the obligation to convene and organise the first negotiation meeting, when the collective bargaining procedure is triggered, belongs exclusively to the employer.
- In order to promote the amicable and speedy settlement of individual labour disputes, the parties may include in the contract, when concluding the individual employment contract or during its performance, a clause stating that any individual labour dispute shall be settled amicably through the conciliation procedure. If the parties have only reached a partial agreement, either party may apply to the competent court for a full settlement of the individual labour dispute.
- Establishing the jurisdiction of the court as the competent court to judge individual and collective

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dialogului social disparusera prevederile de competenta si orice referire la conflictele individuale de munca;

- stabilirea unui termen de apel de 10 zile de la data comunicarii hotararii;

2. Ordonanta de urgenta nr. 47/2023 pentru modificarea si completarea Legii nr. 448/2006 privind protectia si promovarea drepturilor persoanelor cu handicap

Actul normativ stabileste faptul ca la stabilirea procentului de cel putin 4% din numarul total de angajati in care angajatorii care au cel putin 50 de angajati au obligatia de a angaja persoane cu handicap, *nu se iau in calcul asistentii personali ai persoanelor cu handicap grav angajati in conditiile legii.*

3. Legea nr. 140/2023 pentru completarea art. 51 alin. (1) din Legea nr. 53/2003 - Codul muncii

Actul normativ introduce o noua situatie de suspendare a contractului individual de munca la initiativa salariatului, si anume pe durata desfasurarii, pe baza de contract incheiat in conditiile legii, a unei activitati specifice in calitate de *asistent maternal, asistent personal al persoanei cu handicap grav sau asistent personal profesionist.*

4. Ordinul nr. 1447/2023 pentru modificarea si completarea unor reglementari privind documentele financiar-contabile

labour disputes, after the new law on social dialogue had removed the provisions on jurisdiction and any reference to individual labour disputes;

- setting a time limit for appeal of 10 days from the date of communication of the judgment;

2. Emergency Ordinance No 47/2023 amending and supplementing Law No 448/2006 on the protection and promotion of the rights of persons with disabilities

The normative act establishes that when determining the percentage of at least 4% of the total number of employees in which employers with at least 50 employees are obliged to employ persons with disabilities, *the personal assistants of severely disabled persons employed under the law are not taken into account.*

3. Law No. 140/2023 supplementing Art. 51 para. (1) of Law no. 53/2003 - Labour Code

The normative act introduces a new situation of suspension of the individual employment contract at the initiative of the employee, namely during the performance, on the basis of a contract concluded in accordance with the law, of a specific activity as a maternal assistant, personal assistant to the severely disabled person or professional personal assistant.

4. Order No 1447/2023 amending and supplementing certain regulations on financial and accounting documents

Actul normativ prevede in mod expres termenul de arhivare de cinci ani a statelor de plata: „Registrelle de contabilitate obligatorii si documentele justificative care stau la baza inregistrarilor in contabilitatea financiara se pastreaza in arhiva persoanelor prevazute la art. 1 din legea contabilitatii timp de 5 ani calculati de la data de 1 iulie a anului urmator celui incheierii exercitiului financiar in care au fost intocmite, inclusiv pentru statele de salarii”.

The normative act expressly provides for a five-year archiving period for pay statements: "The mandatory accounting records and the supporting documents underlying the entries in the financial accounting shall be kept in the archives of the persons referred to in Article 1 of the Accounting Act for five years calculated from July 1st of the year following the end of the financial year in which they were drawn up, including for pay statements".

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