

NEWSLETTER
June 2011

**I. HOTARAREA Nr. 500 din data de 18.05.2011
privind registrul general de evidenta a salariatilor**

In Monitorul Oficial, Partea I nr. 372 din data de 27.05.2011 a fost publicata Hotararea Guvernului nr. 500 din 18.05.2011 privind registrul general de evidenta a salariatilor (denumita in continuare „Hotararea nr. 500”) prin care se abroga, incepand cu data de 01.08.2011, Hotararea nr. 161 din 03.02.2006 privind intocmirea si completarea registrului general de evidenta a salariatilor (denumita in continuare „Hotararea nr. 161”).

Desi Hotararea nr. 500 abroga Hotararea nr. 161, multe dintre prevederile reglementate de aceasta din urma se regasesc si in noua reglementare, in continuare urmand sa prezentam principalele noutati aduse in domeniul muncii.

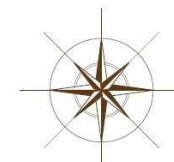
Conform noii reglementari, pe langa obligatia de a infiinta un registru general de evidenta a salariatilor, angajatorul are si obligatia de a transmite registrul la inspectoratul teritorial de munca. Mai mult, noua reglementare prevede ca au obligatia de a infiinta si transmite registrul la inspectoratul teritorial de munca si misiunile diplomatice si oficiile consulare ale altor state in Romania, respectiv, dupa caz, instituttele culturale si reprezentantele comerciale si economice ale altor state in Romania, pentru personalul angajat local care are cetatenia romana sau resedinta permanenta in Romania.

**I. GOVERNMENT DECISION No. 500 dated 18.05.2011
on the general register of employees**

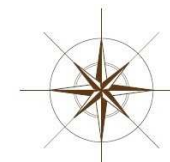
In the Official Gazette, 1st Part no. 372 dated 27.05.2011 was published the Government Decision no. 500 of 18.05.2011 on the general register of the employees (hereinafter referred to as “Decision no.500”) through which is repealed, starting from 01.08.2011 the Decision no. 161 of 03.02.2006 on drafting and filling in the general register of the employees (hereinafter referred to as “Decision no. 161”).

Although Decision no. 500 repeals Decision no. 161, many of the provisions covered by the latter are also found in the new regulation. Further we shall solely present the main changes brought in the labour field.

According to the new regulation, in addition to the obligation to draft a general register of the employees the employer has the obligation to submit the register with the Territorial Labour Inspectorate. Moreover, the new regulation stipulates that the diplomatic missions and consular offices of other countries in Romania, respectively, as the case may be, the cultural institutions and commercial and economic representatives of other states in Romania, are also required to draft and send the general register to the Territorial Labour Inspectorate for the local staff who has Romanian citizenship or permanent residence in Romania.



<p>Potrivit prevederilor Hotararii nr. 500, atributiile privind completarea si transmiterea registrului vor fi indeplinite de una sau mai multe persoane nominalizate prin decizie scrisa de catre angajator. Mai mult, angajatorii pot contracta serviciul de completare si transmitere a registrului prin incheierea de contracte de prestari servicii cu prestatori inregistrati la inspectoratele teritoriale de munca, situatie in care angajatorul are obligatia de a informa, in scris, inspectoratul teritorial de munca, despre incheierea contractului de prestari servicii.</p> <p>Noua reglementare, spre deosebire de reglementarea anterioara, prevede in mod expres obligatia angajatorilor/prestatorilor care opereaza efectiv in registru de a prelucra datele cu caracter personal ale salariatilor cu respectarea prevederilor Legii nr. 677/2001 pentru protectia persoanelor cu privire la prelucrarea datelor cu caracter personal si libera circulatie a acestor date.</p> <p>Pe langa elementele prevazute de Hotararea nr. 161, conform noilor prevederi legale, registrul va cuprinde si urmatoarele elemente:</p> <ul style="list-style-type: none">▪ cetatenia si tara de provenienta a salariatului – Uniunea Europeana – UE, non-UE, Spatiul Economic European – SEE;▪ perioada detasarii si denumirea angajatorului la care se face detasarea;▪ durata normala a timpului de munca si repartizarea acestuia;▪ salariul, sporurile si cuantumul acestora;▪ perioada si cauzele de suspendare a contractului individual de munca, cu exceptia cazurilor de suspendare in baza certificatelor medicale. <p>Conform noii reglementari, la solicitarea scrisa a salariatului sau a unui fost salariat, angajatorul este obligat sa ii elibereze acestuia copii ale documentelor existente in dosar sau ale paginilor din registrul electronic referitoare la persoana sa si/sau la activitatea desfasurata, in termen de</p>	<p>According to the provisions of Decision no. 500, the responsibilities regarding the filling in and transmission of the register shall be performed by one or more persons nominated through the employer’s written decision. Moreover, employers can contract filling in and transmission services of the register by concluding services agreements with providers registered with the territorial labour inspectorates, situation where the employer is obliged to inform in writing the Labour Inspectorate on the conclusion of such services agreement.</p> <p>The new regulation, unlike the previous one, expressly states the obligation of employers/providers which effectively operate in the register, to process the personal data of employees in compliance with Law no. 677/2001 on the protection of individuals regarding the processing of personal data and free movement of such data.</p> <p>Besides the elements provided by Decision no. 161, according to the new legal provisions, the register shall contain the following elements:</p> <ul style="list-style-type: none">▪ citizenship and country of origin of the employee – European Union – EU, non-EU, European Economic Area – EEA;▪ period of detachment and name of employer where the detachment is covered;▪ normal working time period and its distribution;▪ salary, benefits and their amount;▪ period and reasons for the suspension of the individual labour contract, unless the suspension is based on medical certificates. <p>According to the new regulation, at the written request of the employee or of a former employee, the employer is obliged to release copies of the documents contained in the file, or copies of pages of the electronic register regarding the person and/or the activity carried out, within 15</p>
--	---



cel mult 15 zile de la data solicitarii (vechea reglementare nu prevedea niciun termen in care angajatorul avea obligatia de a raspunde unei astfel de solicitari).

In masura in care, din motive obiective, angajatorul se afla in imposibilitatea de a elibera documentele solicitate de salariat, conform celor mentionate mai sus, salariatul/fostul salariat poate solicita inspectoratului teritorial de munca din raza caruia angajatorul isi desfasoara activitatea, eliberarea unei adeverinte din care sa rezulte elementele continute in registru, astfel cum a fost intocmit si transmis de catre angajator, inspectoratul avand obligatia de a elibera documentul solicitat in termen de cel mult 15 zile de la data solicitarii.

II. Recurs in interesul legii privind concedierea pentru motive care nu tin de persoana salariatului

In Monitorul Oficial, Partea I nr. 444 din 24 iunie 2011 a fost publicata decizia nr. 6 din 9 mai 2011 a Inaltei Curti de Casatie si Justitie privind examinarea recursurilor in interesul legii formulat cu privire la aplicabilitatea dispozitiilor art.74 alin. (1) lit. d) din Codul Muncii, conform carora decizia de concediere se comunica salariatului in scris si trebuie sa contina in mod obligatoriu lista tuturor locurilor de munca disponibile in unitate si termenul in care salariații urmează să opteze pentru a ocupa un loc de muncă vacant, in situatia in care concedierea s-a dispus din motive care nu tin de persoana salariatului.

1) Obiectul recursului in interesul legii

Prin recursurile in interesul legii formulate, s-a aratat ca in practica judiciara nu exista un punct de vedere unitar cu privire la aplicabilitatea dispozitiilor art. 74 alin. (1) lit. d) din Codul Muncii in situatia in care

days from the request (the old regulation did not provide any time period within which the employer had the obligation to respond to such request.)

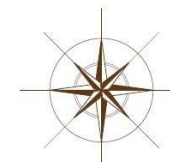
To the extent that, for objective reasons, the employer was unable to release the documents requested by the employee, as mentioned above, the employee/former employee may request the Territorial Labour Inspectorate where the employer operates, the issuance of a certificate proving the elements contained in the register, as drafted and submitted by the employer, the Inspectorate having the obligation to issue the requested document within 15 days from the request.

II. Appeal in the interest of the law on dismissal for reasons not related to the employee

In the Official Gazette, 1st Part no. 444 of June, 24, 2011 was published the decision no. 6 of May, 9, 2011 of the High Court of Cassation and Justice regarding the examination of appeals in the interest of law formulated on the applicability of the provisions of art. 74 paragraph (1) letter d) of the Labour Code, according to which the dismissal decision is communicated to the employee in writing and must contain the full list of jobs available in the unit, and the period within which the employees will opt to fill a vacant job, to the case in which the dismissal was ordered for reasons not related to the employee.

1) The object of the appeal in the interest of law

Through the appeals in the interest of law formulated, it was shown that in practice there is a lack of unitary interpretation with regard to the applicability of the provisions of art. 74, paragraph (1), letter d)



concedierea s-a dispus din motive care nu tin de persoana salariatului, unele instante interpretand ca obligatia stabilita de art.74 alin. (1) lit. d) din Codul Muncii se aplica si in situatia in care concedierea s-a dispus din motive care nu tin de persoana salariatului.

2) Interpretarea oficiala Inaltei Curti de Casatie si Justitie

Inalta Curte a considerat ca se impune admiterea recursurilor formulate, stabilind ca *“dispozitiile art. 74 alin. (1) lit. d) din Codul Muncii nu se aplica in situatia in care concedierea s-a dispus pentru motive care nu tin de persoana salariatului, in temeiul art. 65 din Codul Muncii”*.

from the Labour Code in case the dismissal was ordered for reasons not related to the employee.

2) The official interpretation of the High Court of Cassation and Justice

The High Court considers that the admission of the formulated appeals is imposed, establishing that *“provisions of art 74, paragraph 1, letter d) of the Labour Code do not apply when the dismissal was ordered for reasons not related to the employee, under art. 65 of the Labour Code”*.

Yours sincerely,
Almaj & Albu, attorneys at law