

**NEWSLETTER**  
**March 2011**

**LEGEA NR. 53/2003 – CODUL MUNCII**

In Monitorul Oficial, Partea I nr. 225 din 31/03/2011 a fost publicata Legea nr. 40/2011 pentru modificarea si completarea Legii nr. 53/2003 – Codul Muncii, care va intra in vigoare incepand cu data de 30 Aprilie 2011.

Contractele colective de munca si actele aditionale incheiate in intervalul de la data intrarii in vigoare a Legii 40/2011 si pana la data de 31 decembrie 2011 nu pot prevedea o durata de valabilitate care sa depaseasca data de 31 decembrie 2011. Dupa aceasta data, contractele colective de munca si actele aditionale la acestea se vor incheia pe durate stabilite prin lege speciala.

Contractele colective de munca in aplicare la data intrarii in vigoare a Legii 40/2011 isi produc efectele pana la data expirarii termenului pentru care au fost incheiate.

In continuare vom prezenta principalele modificari aduse de Legea 40/2011 Codului Muncii, cu privire la: (i) incheierea contractului individual de munca; (ii) executarea contractului individual de munca; (iii) suspendarea contractului individual de munca; (iv) concediere si demisie, urmand ca prevederile referitoare la : (i) contractul individual de munca pe durata determinata; (ii) timpul de munca, (iii) formarea profesionala si (iv) raspunderea juridica, sa fie analizate in cadrul Newsletter-ului din luna aprilie.

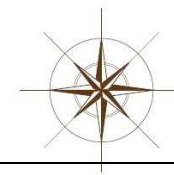
**LAW NO. 53/2003 – LABOUR CODE**

Within the Official Gazette, Part I no. 225 dated 31/03/2011 it was published Law no. 40/2011 amending and supplementing Law no. 53/2003 – The Labour Code, which shall be applied starting with 30<sup>th</sup> of April 2011.

The collective labour contracts and the additional deeds concluded between the entering into force date of Law 40/2011 and 31<sup>st</sup> of December 2011 cannot provide a validity period exceeding 31<sup>st</sup> of December 2011. After this date, the collective labour contracts and the additional deeds shall be concluded for periods established through special law.

The collective labour contracts in force on the date of entering into force of Law 40/2011 entering shall be effective until their expiration date.

Hereinafter we shall present the main amendments brought by Law 40/2011 to the Labour Code, relative to: (i) the conclusion of the individual labour contract; (ii) the execution of the individual labour contract; (iii) the suspension of the individual labour contract; (iv) the dismissal and resignation, following that the provisions relative to: (i) the individual labour contract for a limited duration; (ii) the time of work; (iii) the professional training and (iv) legal liability, to be analyzed within the month of April Newsletter.



### **1) Incheierea contractului individual de munca**

Ca urmare a noii reglementari, forma scrisa este obligatorie pentru incheierea valabila a contractului individual de munca, spre deosebire de vechea reglementare in care forma scrisa a contractului era ceruta ad probationem, iar nu ad validitatem. Astfel, conform noii reglementari, partile nu mai au posibilitatea de a dovedi prevederile contractuale si prestatiile efectuate prin orice alt mijloc de proba.

Anterior inceperii activitatii, contractul individual de munca se inregistreaza in registrul general de evidenta a salariatilor, iar ulterior se va transmite Inspectoratului Teritorial de Munca. Aceasta prevedere legala are la baza abrogarea Legii nr. 130/1999 privind unele masuri de protectie a persoanelor incadrate in munca de catre OUG nr. 123/2010 prin care se prevede ca, incepand cu data de 1 ianuarie 2011, angajatorul nu mai are obligatia de a inregistra contractele individuale de munca la ITM, acestea urmand a fi inregistrate in registrul general de evidenta a salariatilor care se va depune in forma electronica la Inspectoratul Teritorial de Munca.

### **2) Perioada de proba**

Noua reglementare prevede ca la incheierea contractului individual de munca se poate stabili o perioada de proba de cel mult 90 de zile calendaristice pentru functiile de executie si de cel mult 120 de zile calendaristice pentru functiile de conducere, spre deosebire de vechea reglementare in care durata legala a perioadei de proba era de cel mult 30 de zile calendaristice pentru functiile de executie si de cel mult 90 de zile calendaristice pentru functiile de conducere.

In ceea ce priveste incetarea contractului individual de munca pe durata sau la sfarsitul perioadei de proba, aceasta se poate realiza, conform noilor prevederi, exclusiv printr-o notificare scrisa, fara preaviz, la initiativa oricareia dintre parti si fara a fi necesara motivarea acesteia. Astfel, noua reglementare completeaza dispozitiile legale anterioare

### **1) Conclusion of the individual labour contract**

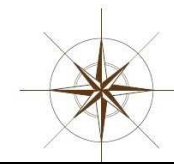
Pursuant to the new regulations, the written form is mandatory for the valid conclusion of the individual labour contract, unlike the previous regulation in which the written form of the contract was stipulated ad probationem and not ad validitatem. Therefore, according to the new regulation, the parties can no longer make the proof of the contractual provisions and of the performed work by any other means of evidence.

Before the beginning of the activity, the individual labour contract shall be registered within the general registry of employees which shall be sent to the Territorial Labour Inspectorate. This legal provision is based on the repeal of Law no. 130/1999 on certain measures for protecting the employed personnel by GEO no.123/2010 through which it is stipulated that, as from the 1<sup>st</sup> of January, the employer has no longer the obligation to register the individual labour contracts with the TLI, following these to be registered within the general registry of employees which shall be transmitted in electronic form to the Territorial Labour Inspectorate.

### **2) Trial period**

The new regulation stipulates that at the conclusion of the individual labour contract it may be established a trial period not exceeding 90 calendar days for executive positions and not exceeding 120 calendar days for management positions, unlike the previous regulation in which was stipulated that the legal trial period was of 30 calendar days maximum for executive positions and of 90 calendar days maximum for management positions.

Relative to the termination of the individual labour contract during the trial period or at the end of such period, according to the new provisions it may be realized exclusively through a written notification, without notice, at the initiative of either party and without the necessity of motivation. Therefore, the new regulation supplements the previous



care nu prevedeau expres valabilitatea notificarii scrise in lipsa preavizului si a motivarii acesteia, lasand astfel loc de interpretari cu privire la conditiile necesare pentru valabilitatea notificarii.

Mai mult, cu privire la perioada de proba, daca vechea reglementare prevedea ca angajarea succesiva a mai mult de trei persoane pe perioada de proba pentru acelasi post este interzisa, conform noii reglementari nu mai este stabilit un numar maxim de persoane ce pot fi angajate succesiv pe perioada de proba pentru acelasi post, ci se stabileste un termen in care pot fi efectuate astfel de angajari succesive, respectiv un termen de maximum 12 luni.

### **3) Executarea contractului individual de munca**

Conform noilor prevederi ale Codului Muncii, cetatenii straini si apatrizii pot fi angajati prin contract individual de munca in baza autorizatiei de munca sau a permisului de sedere in scop de munca, eliberata/eliberat potrivit legii (vechea reglementare prevedea angajarea prin contract individual de munca a cetatenilor straini si apatrizilor in baza permisului de munca eliberat potrivit legii), noua reglementare implementand dispozitiile normelor europene in domeniu.

### **4) Suspendarea contractului individual de munca**

Conform vechii reglementari, una dintre situatiile in care contractul individual de munca poate fi suspendat din initiativa angajatorului se refera la cazul intreruperii temporare a activitatii, fara incetarea raportului de munca, in special pentru motive economice, tehnologice, structurale sau similare. Referitor la aceasta situatie, noua reglementare prevede ca, in cazul in care reducerea temporara a activitatii depaseste 30 de zile lucratoare, angajatorul va avea posibilitatea reducerii programului de lucru de la 5 zile la 4 zile pe saptamana, cu reducerea corespunzatoare a salariului, pana la remedierea situatiei care a cauzat

legal provisions which did not expressly stipulate the validity of the written notification in the absence of the notice and of its motivation, thus leaving room for interpretation relative to the conditions required for the validity of the notification.

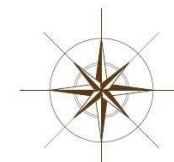
Moreover, relative to the trial period, unlike the previous regulation which stipulated that the successively employment of more than three persons for trial period for the same position is prohibited, according to the new regulation there is no longer stipulated a maximum number of persons who can be successively employed for trial period for the same position, but it is stipulated a term in which such successively employments may be performed, respectively a term not exceeding 12 months.

### **3) Execution of individual labour contract**

According to the new provisions of the Labour Code, foreign and stateless citizens can be employed through individual labour contract based on the work authorization or the residence permit for employment purposes legally issued (the previous regulation stipulated the employment through individual labour contract of the foreign and stateless citizens based on the work permit legally issued), the new regulation implementing the provisions of the European norms in this field.

### **4) Suspension of the individual labour contract**

According to the previous regulation, one of the situations in which the individual labour contract may be suspended on the employer's initiative refers to the event of a temporary discontinuance of activity, without the termination of the labour relationships, especially for economic, technological, structural or similar reasons. Relative to this situation, the new regulation stipulates that, if the temporary discontinuance of activity exceeds 30 working days, the employer shall have the possibility to reduce the work program from 5 days to 4 days a week, with the adequate adjustment of the wages, until the mending of



reducerea programului, dupa consultarea prealabila a sindicatului reprezentativ de la nivelul unitatii sau a reprezentantilor salariatilor, dupa caz.

### 5) Concedierea si Demisia

Referitor la concedierea colectiva, noile reglementari prevad ca, in termen de 45 de zile calendaristice de la data concedierii, salariatul concediat prin concediere colectiva are dreptul de a fi reangajat cu prioritate pe postul reinfiintat in aceeasi activitate, fara examen, concurs sau perioada de proba, angajatorul avand obligatia de a le trimite salariatilor concediati o comunicare scrisa prin care sa ii informeze cu privire la reluarea activitatii. Termenul in care salariatii isi pot manifesta in scris consimtamantul cu privire la locul de munca oferit este de maximum 5 zile calendaristice de la data comunicarii angajatorului (reglementarea anterioara prevedea un termen de maximum 10 zile lucratoare de la data comunicarii angajatorului).

Conform noilor modificari, Codul Muncii nu mai prevede pentru angajatorul care a dispus concedieri colective interdictia de a face noi incadrari pe locurile de munca ale salariatilor concediati, timp de 9 luni de la data concedierii acestora, astfel cum era prevazut in reglementarea anterioara.

In situatia in care angajatorul dispune concedierea: (i) pentru inaptitudine fizica si/sau psihica [art. 61, lit. c], (ii) pentru necorespondere profesionala [art. 61, lit. d] sau (iii) pentru motive care nu tin de persoana salariatului [art. 65 si art. 66], acesta are obligatia de a acorda salariatului un preaviz care, conform noilor prevederi, nu poate fi mai mic de 20 de zile lucratoare, spre deosebire de reglementarea anterioara care prevedea un termen minim de preaviz de 15 zile lucratoare.

In ceea ce priveste controlul si sanctionarea concedierilor nelegale, instanta care a dispus anularea concedierii, la solicitarea angajatului va

the situation which caused the program reduction, after the prior consultation with the representative trade union or, as applicable, the employees' representatives.

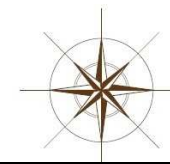
### 5) Dismissal and Resignation

Relative to the collective dismissal, the new regulations stipulates that, in 45 days as from the dismissal date, the employee dismissed through collective dismissal has the right to be re-employed with priority in the recreated position in the same activity, without examination, contest or trial period, the employer having the obligation to send to the dismissed employees a written communication in order to inform them about the restart/resuming of the activity. The term in which the employees may give their written consent relative to the offered job is of maximum 5 calendar days as of the date of the employer's communication (the previous regulation stipulated a term not exceeding 10 working days as of the date of the employer's communication).

According to the new amendments, the Labour Code does no longer stipulate for the employer having ordered collective dismissals the interdiction to employ new people to fill in the positions of the dismissed employees, for a period of 9 months as from the date of their dismissal, as it was stipulated in the previous regulation.

If the employer orders the dismissal: (i) for physical and/or mental incapacity [art. 61, c]; (ii) because the employee does not professionally correspond to his current position [art.61, d] or (iii) for reasons not related to the employee [art. 65 and art. 66], he has the obligation to give the employee a notice which, according to the new provisions, may not be less than 20 working days, unlike the previous regulation which stipulated a notice term of minimum 15 working days.

Relative to the control and sanction of illegal dismissals, the court having ordered the revocation of the dismissal, at the employee's



<p>repune partile in situatia anterioara emiterii actului de concediere. Noua reglementare, spre deosebire de cea anterioara, prevede si situatia in care salariatul nu solicita repunerea in situatia anterioara emiterii actului de concediere, caz in care contractul individual de munca va inceta de drept la data ramanerii definitive si irevocabile a hotararii judecatoresti.</p> <p>Cu privire la termenul de preaviz in caz de demisie, acesta nu poate fi mai mare de 20 de zile lucratoare pentru salariatii cu functii de executie, respectiv mai mare de 45 de zile lucratoare pentru salariatii care ocupa functii de conducere (reglementarea anterioara prevedea un termen de preaviz de maximum 15 zile calendaristice pentru salariatii cu functii de executie, respectiv de 30 de zile calendaristice pentru salariatii cu functii de conducere).</p>	<p>request shall restore the parties to the situation existing before the issuance of the dismissal document. The new regulation, unlike the previous one, also stipulates the situation in which the employee does not request the restoration in the situation existing before the issuance of the dismissal document, in which case the individual labour contract shall de jure terminate as from the date the court's decision remains definitive and irrevocable.</p> <p>Relative to the notice term in case of resignation, it cannot exceed 20 working days for the employees in executive positions, respectively 45 working days for the employees in management positions (the previous regulation stipulated a notice term of maximum 15 calendar days for the employees in executive positions, respectively 30 calendar days for the employees in management positions).</p>
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Yours sincerely,  
Almaj & Albu, attorneys at law