

Tax & Legal Weekly Alert

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In this issue:

Accepting an employee to work while the individual employment agreement is suspended represents a civil offense, the High Court of Cassation and Justice ruled

By Decision no. 20/2016, the High Court of Cassation and Justice (the Panel for ruling on law matters) ruled that the provisions of Article 260 (1) e) of the Labour Code, according to which „receiving up to 5 people to work without concluding an individual employment agreement, as per article 16 (1)“ is a civil offense, are also applicable when employees are accepted to work based on a suspended individual employment agreement.



Accepting an employee to work while the individual employment agreement is suspended represents a civil offense, the High Court of Cassation and Justice ruled

In the future, if following inspections the Territorial Labour Inspectorates state that up to 5 employees are performing work although their individual employment agreements are suspended, they could sanction the employer with a fine ranging from RON 10,000 to RON 20,000 for each such employee.

The arguments on which the Decision no. 20/2016 of the High Court of Cassation and Justice is based

- The necessity to combat undeclared work;
- Performing work during the period when the individual employment agreement is suspended leads to the circumvention of the legal provisions requiring the written form of the individual employment agreement;
- Prevention of abusive behavior by parties to the individual employment agreement;
- The necessity to construe the law not only *ad litteram*, but also within its spirit.

Steps to be followed by employers to prevent being sanctioned with a civil fine for receiving an employee for work whose individual employment agreement is suspended

- Recording the occurrence of the individual employment agreement's suspension through a document, in writing, to indicate both the legal grounds and the suspension effects;
- Registering the suspension of the individual employment agreement in the General Registry of Employees (except for cases when suspension is based on medical certificates);
- Recording the termination of the individual employment agreement's suspension through a document, in writing, to indicate the grounds for the suspension' termination and the date on which the suspension ceases;
- Registering the termination of the individual employment agreement's suspension in the General Registry of Employees (except for cases when suspension is based on medical certificates);
- Receiving an employee for work only after having recorded in writing the termination of the individual employment agreement's suspension and after having performed the necessary registrations in the General Registry of Employees.

Possible consequences of Decision no. 20/2016 of the High Court of Cassation and Justice

In the future, the Decision of the High Court of Cassation and Justice could create some interpretation problems for the following provisions:

- Article 260 (1) f) of the Labour Code, according to which "performing work by a person without having concluded an individual contract of employment" represents a civil offense;
- Article 264 (4) of the Labour Code, according to which "receiving for work more than 5 people, regardless of their citizenship, without concluding an individual employment agreement represents a criminal offense and is sanctioned with imprisonment from 3 months to 2 years or with a fine".

Thus, starting from Decision no. 20/2016 of the High Court of Cassation and Justice, in the future, it should be established if the civil offense and the criminal offense (which have not been brought before the High Court of Cassation and Justice) are to be interpreted so as to also include the situation of performing work, respectively receiving to work, based on a suspended individual employment agreement.

For further questions regarding the aspects mentioned in this alert, please contact us.

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