

Tax & Legal Weekly Alert

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Employers will no longer have the possibility to suspend the individual employment contracts during the disciplinary investigation of employees

On 05.05.2016, the Constitutional Court ruled that art. 52 Para (1) letter a) of Law no. 53/2003 on the Labor Code ("Labor Code"), which regulates the employer's right to suspend the individual employment agreement during the prior disciplinary investigation is unconstitutional.



Employers will no longer have the possibility to suspend the individual employment contracts during the disciplinary investigation of employees

On 05.05.2016, the Constitutional Court ruled that art. 52 Para (1) letter a) of Law no. 53/2003 on the Labor Code ("Labor Code"), which regulates the employer's right to suspend the individual employment agreement during the prior disciplinary investigation is unconstitutional.

In grounding this solution, the Constitutional Court argued that the suspension of the individual employment agreement during the prior disciplinary investigation unduly narrows the right to work, enshrined under art. 41 Para (1) of the Romanian Constitution.

Application of the Constitutional Court decision ("Decision") in time

The Decision was brought to public attention through a press release (it has not yet been published in the Official Gazette) and will come into force only after it will be motivated and published in the Official Gazette.

Thus, from the date the Decision shall be published in the Official Gazette, art. 52 Para (1) letter a) of the Labor Code shall be suspended by operation of law, for a period of 45 calendar days. If during this period of time the Parliament or the Government does not take the appropriate measures to ensure the compliance of provisions deemed unconstitutional with the Constitution, these provisions shall cease to produce legal effects at the date the 45 days term expires.

Practical implications arising from the Decision

Following the publication of the Decision in the Official Gazette, employers will not have the possibility to suspend the individual employment agreements under art. 52 Para (1) letter a) of the Labor Code (during the prior disciplinary investigation).

Consequently, employees facing disciplinary investigation will have the right to come to work during the investigation, even if maintaining their contract active could prejudice employers.

In cases where employers refuse to allow employees facing a disciplinary investigation to come to work, they could be sued. In such a scenario, employees can ask the courts to declare the nullity of the measure taken by the employer and to order the employer (i) to reinstate them on the positions held prior to the suspension of the individual employment agreements and to (ii) pay them the salary rights they would have been entitled to had the individual employment agreement not been suspended.

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

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