

Tax Alert

April 17th, 2018



Summary:

- **Teleworking (off-site work)** – The law 81/2018
- **New rules for the activity of day laborers** – The law 86/2018

ECOVIS Romania: Financial Audit Services

Esteemed Partner,

We would like to inform you through this Tax Alert about the most recent legal changes.

The Official Monitory no. 296/02.04.2018 published the Law 81/2018 regarding the regulation of the teleworking.

Teleworking = the work organizing form characterized by the fact that the employee, regularly and voluntarily, conducts his/her specific attributions of work, occupation or trade in a place different to the work place organized by the employer, at least one day each month, through the exploitation of the IT and communication technology.

Teleworker is any employee conducting activity in the above mentioned conditions.

The teleworking is based on the mutual agreement of the Parties and **it is mentioned expressly in the individual employment agreement at its conclusion** for the new hired staff or through an addendum to the running employment agreement.

The refusal of the employee to accept the teleworking status does not represent a reason for unilateral change of the individual employment agreement and it does not represent a basis for the disciplinary sanctioning of the employee.

Work Schedule and Activity Control

In order to fulfil their attributions, **teleworkers organize their work schedule by mutual agreement with the employer.**

To notice: At the request of the employer and with the written agreement of the full-time teleworker, he or she might provide additional work.

The employer is entitled to control the activity of the teleworker, under the conditions determined through the individual employment agreement, internal regulation and/or the applicable collective employment agreement, under the conditions of the law.

If teleworking is applicable, what are the necessary changes/additions to the employment agreement?

In case of teleworking, the individual employment agreement will mention additionally the following items:

- The express stipulation that the employee works as a teleworker;
- The duration and/or the days when the teleworker conducts activity at a workplace organized by the employer;
- The place/places where the teleworking will take place, as agreed by the parties;
- The agreed schedule during which the employer is entitled to control the activity of the teleworker and the effective modality of executing the control;
- The modality of outlining of the work hours rendered by the teleworker;
- The responsibilities of the parties pursuant to the place/places for conducting the teleworking, including the responsibilities in the field of work security and health;

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- The obligation of the employer to ensure the transportation to and from the place of teleworking of the goods/materials used by the teleworker in his/her activity, if applicable;
- The obligation of the employer to inform the teleworker about the applicable legal provisions, about the collective employment agreement applicable and/or the internal regulation, with a view to the protection of the personal data, and the obligation of the teleworker to observe these provisions as well;
- The actions provided by the employer in order to avoid the isolation of the teleworker by the rest of the team and the creation of conditions of meeting the team members constantly;
- The conditions for the employer to cover the expenses due to the teleworking activity.

The Teleworker: Rights and Obligations

The teleworker benefits by all rights granted by the law, by the internal regulation and by the collective employment agreements applicable to the employees that conduct activity at the premises or at the domicile of the employer.

The individual or collective employment agreements may add other specific conditions, under the provisions of the Employment Code and of the Law for Social Dialogue (Law no. 62/2011).

From the main obligations of the teleworker we can mention:

- To inform the employer about the work equipment utilized and about the on premise conditions in the teleworking place, and to permit the access of the employer, if possible, in order to determine and to implement the necessary actions for work security and health;
- Not to tamper with the premises of the work security and health from the teleworking place;
- To use only work equipment that do not endanger his/her security;
- To observe the stipulations of the Law of security and health of the work no. 319/2006, with subsequent additions, and the provisions of the individual employment agreement;
- To observe the specific rules and the restrictions announced by the employer regarding the Internet accessing networks used or regarding the utilization of the work equipment.

The Employer: obligations

The employer bears the following specific obligations regarding the work security and health for the teleworker:

- To ensure the means specific to the IT and communication technologies and/or safe work equipment necessary for the work, with the exception of a different agreement of the parties;

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- To install, to check and to provide maintenance for the necessary work equipment, with the exception of the situation when the parties agree a different setting;
- To ensure the necessary premises for the teleworker to benefit from sufficient and appropriate training in the work security and safety field.

For the verification of the implementation and the observance of the legal demands in the field of work health and security, and of the employment relations, *the representatives of the competent authorities (ITM)* have access to the teleworking places.

ATTENTION! If the place of the teleworking is the domicile of the teleworker, the access is granted only after the due notification in advance and under the conditions of the agreement of the teleworker.

Misdemeanors and sanctions

The following deeds are sanctioned with various amounts of fines:

- The employment contract or its addendum does not mention expressly the conducting of activity in the teleworking regimen – *a 10.000 lei person fine*;
- The teleworking activity is conducted without the consent of the parties – *a 5.000 lei fine*;
- The provisions regarding the supplementary work are not observed (= at the request of the employer, with the written agreement of the teleworker employed full time) – *a 5.000 lei fine*;
- The individual employment agreement is concluded without the mentioning of the mandatory provisions – *a 5.000 lei fine*;
- The employer does not provide the means necessary for the information and communication technology and/or safe work equipment necessary for the professional activity (with the exception of a different agreement of the parties) – *a 2.000 lei fine*;
- The employer does not install, verify and provide maintenance for the necessary work equipment (with the exception of a different agreement of the parties) – *a 2.000 lei fine*;
- The employer does not ensure conditions for the teleworker to be sufficiently and appropriately trained in the field of work security and health, especially under the form of information and work procedures specific to the teleworking place and the utilization of the equipment with visualization display: at the moment of hiring, at the modification of the teleworking place, at the entry of a new work equipment, at the validation of any new work procedure – *a 2.000 lei fine*.

The finding of the misdemeanors and the sanctioning of faults are made by the work inspectors.

ECOVIS Romania: Payroll & HR Services



New rules regarding the activity of day-laborers applicable from April 13th, 2018

Following the publication of the law no. 86/2018, the Law no. 52/2011 was modified in the articles regarding the activity of the day-laborers.

We would like to remind you that the day-laborer is the natural person with work capacity conducting unskilled activities occasionally, for a beneficiary, for a remuneration.

The duration of the occasional activity conducted by the day-laborer is of at least one day, corresponding to 8 hours/work, and the daily duration cannot overcome 12 hours. The under-age day-laborer with work capacity can work 6 hours/day, but no more than 30 hours/week.

Other stipulations:

- For the provided activity, the day-laborer has the right to a remuneration established by direct negotiation between the parties. **The minimal value per hour is of 11,40 lei** (1.900 lei gross / 166,66 hours).
- Even if the parties agree for a reduced number of work hours/day, the pay of the day-laborer will be made for the equivalent of at least 8 hours of work (91,20 lei / day).
- For the incomes derived by the day-laborers **a 10% income tax will be withheld**, the withholding and its payment **being the responsibility of the beneficiary of the services**. We mention that for these incomes social contributions are not owed.
- The under-age day-laborer **will not provide nighttime activity**.

The general rule is that no day-laborer can conduct activities for the same beneficiary for a period longer than **90 days cumulated during one calendar year**.

The Law no. 86/2018 stipulates a few exceptions: the day-laborers conducting activity in the field of livestock breeding in the extensive system through seasonal grazing of ovine, bovines, equines, seasonal activities within the botanical gardens subordinated to accredited universities, and in the viticulture field. For these exceptions, the period cannot overcome **180 days cumulated during a calendar year**. It is important to remember that the beneficiary of the seasonal activities **is not allowed to use day-laborers for activities in the benefit of a third party**.

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The occasional unskilled labor may be used in the following fields mentioned by the Classification of the activities in the national economy, as updated:

- Farming, hunting, and their additional services – division 01;
- Forestry, excepting forestry exploitation – division 02;
- Fish farming and aquaculture – division 03;
- Collection, treating and disposal of non-hazard waste– class 3821 and class 3811;
- Recovery of materials – group 383;
- Wholesale commerce of unprocessed farming products and of live livestock – group 462;
- Activities of organizing expositions, fairs and congresses – group 823;
- Publicity – group 731;
- Activities of artistic interpretation – shows – class 9001, support activities for artistic interpretations – shows – class 9002 and activities of managing the show facilities – class 9004;
- R&D activities in biotechnology – class 7211, R&D activities in other natural science and engineering – class 7219;
- R&D activities in the field of social and humanity science – class 7220 (archeology digging);
- Activities of landscape maintenance – planting, attending and maintaining parks and gardens, with the exception of private inhabiting facilities – class 8130;
- Growing seeding material – growing of ornamental plants, including lawn grass for replanting, operations of attending/pruning of trees, activities of nursery gardens, excepting those for forest trees – class 0130;
- Activities of zoo gardens, botanical gardens and natural reserves – class 9140;
- Stock breeding and the reproduction of half-domesticated animals and of other animals – class 0149;
- Hotels and other accommodation facilities – division 55; accommodation facilities for vacations and for short stays – class 5520 – children summer camps (organized by the Youth and Sports Ministry, directly or through the units in its subordination);
- Hotels and other accommodation facilities – division 55; hotels and other similar accommodation facilities – class 5510; accommodation facilities for vacations and short stays – class 5520 – children camps organized by the Youth and Sports Ministry, directly or through subordinated units;
- Accommodation facilities for vacations and short time stay – class 5520 – chalets;
- Activities of sport bases – class 9311;
- Activities of sports clubs – class 9312;
- Activities of catering for events – division 5621.
- restaurants – class 5610;
- Other food service services – 5629;
- Bars and other activities of serving drinks – class 5630.

For questions regarding the content of this material, please contact us directly at your earliest convenience!

The Ecovis Romania team

ECOVIS Romania: Portfolio of services

Accounting

- Financial accounting;
- Reporting preparation and consolidated reports (VAT, income tax, social security, individual tax reports);
- Harmonization of national financial accounting with accounting rules of the mother-company;
- Preparing and certification of annual financial statements;
- Staff outsourcing for accounting services;
- Tax consulting;
- Fiscal reports and revisions;

Audit

- Financial audit according to ISA;
- Restatement of financial statements prepared according to national regulations, to International Financial Reporting Standards (IAS/IFRS) or Reporting Standards specific to the Client (GAAP);
- Financial audit required by the group's policy;
- Internal audit;
- Audit missions like: agreed upon procedures (ISA 4.400), revisions (ISA 2.400), due diligence;

Payroll & HR Administration

- Payroll calculation;
- Preparation and verification of salaries and due taxes;
- Delivery of reports: pay slips, synoptic tables of benefits, retentions, contributions;
- Interface with banking applications and performing of salary payment transactions;
- Standard reporting to the management;
- Collection and processing of employee related data;

Consulting

- Fiscal consulting
- Business&company appraisal;
- Financial analysis and feasibility studies;
- Consulting for M&A, restructuring processes;
- Assistance in implementing IT solutions regarding: financial and management accounting, employees' records, management reports etc.;
- Assistance in preparation of transfer prices file;
- Notifications regarding significant Romanian law changes.

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