

NEW ISSUES STATUTORY UNEMPLOYMENT INSURANCE SYSTEM AND STIMULATE EMPLOYMENT (FROM THE PERSPECTIVE OF THE LABOUR LAW)

Lecturer **Ana VIDAT**¹

Abstract

It is inconceivable By O.U.G. no. 60/2016 were brought new changes and additions to Law no. 76/2002 on the unemployment insurance system and stimulation of employment due to: labor shortages in certain regions claimed by business representatives; European climate of uncertainty marked by the possible exit of the United Kingdom of Great Britain and Northern Ireland in the European Union, and the high probability of returning to Romania for workers who have exercised their right to free movement within the European Union; avoidance of loss absorption external grants for this year.

Keywords: individual employment contract; mobility; stimulate employment; unemployed; first of employment; first installation.

JEL Classification: K31

1. Introductory issues

Law no. 76/2002 on the unemployment insurance system and stimulation of employment support new amendments by the Government Emergency Ordinance no. 60/2016² – measures imposed by the existence of objective reasons (set out in the preamble to the law), namely: labor shortages in some regions complained of businessmen associated with their tendency to relocate in other Member; European climate of uncertainty marked by the possible exit of the United Kingdom of Great Britain and Northern Ireland in the European Union, and the high probability of returning to Romania for workers who have exercised their right to free movement within the European Union; avoidance of loss absorption external grants for the year 2014-2020 financial framework of Human Capital Operational Program, Axis 1, 2 and 3, for reduction of unemployment, the labor market integration of young people, especially those aged between 16 and 24 who do not have jobs, are not in education and not participating in the training of long-term unemployed and people with disabilities; Performance for the 2014-2020 programming period in 2018 according to which the Romanian state will disengage amounts unused to date together with the fact that in 2014-2016 were not employed amounts to finance measures to boost employment work towards the targets assumed by Romania through the partnership 2014 EN 16M8PA001.1.2 respectively human Capital operational Program.

On measures imposed by the adoption of Government Emergency Ordinance no. 60/2016 of interest – in terms of labor law – those which are provided: some facilities for employees; facilitations for employers; certain sanctions consisting ordered both employees and employers to fully repay the amounts received if the conditions imposed.

2. Measures taken by the Government Emergency Ordinance no. 60/2016 in order to create certain facilities for employees

In its first category of rules by which employees are granted certain facilities in order to be stimulated labor mobility are important provisions: art. 73²; art. 74; art. 75; art. 75¹ of Law no. 76/2002.

¹ Ana Vidat – Department of Law, Bucharest University of Economic Studies, Lawyer, member of the Bucharest Bar Association, ana.vidat@yahoo.com

² Published in the "Official Gazette", Part I, no. 773 of October 4, 2016.

A). According to art. 73² par. 1 of Law no. 76/2002 – introduced by Government Emergency Ordinance no. 60/2016 – unemployed registered at employment agencies that do not receive unemployment benefits if they engage full time for more than 3 months after the date of registration at employment agencies benefit from a first activation of 500 lei, tax-free.

People do not benefit from these provisions falling to employers who were in labor relations in the past 12 months (art. 73² par. 2 of Law no. 76/2002).

Persons benefiting from the first activation entitled to maintain it and where, during 3 months of employment, they cease employment relationship or service first employer and fall within 30 days, the another employer on the same terms (art. 73² par. 3 of Law no. 76/2002).

In accordance with art. 73² par. 4 of Law no. 76/2002, the first activation does not stack with:

- the first employment (paid according to art. 73¹ par. 1 of Law no. 76/2002, graduates of educational institutions and special schools graduates, aged 16 or over, registered at the agencies for employment, if who are committed full time for more than 12 months);

- first installation (granted, according to art. 75 par. 1 of Law no. 76/2002, persons registered as unemployed at the agencies for employment falling employment law, in another village located a distance greater than 50 km from the town where they domicile or residence and, as a consequence, moving house or taking up residence in the respective locality or in neighboring localities).

However, according to art. 73² par. 5 of Law no. 76/2002, this first activation may be added to the first employment under art. 74 of Law no. 76/2002 – non-taxable amount paid if the persons registered as unemployed at the agencies for employment falls in employment law, in a village situated at a distance exceeding 15 km from the town in which they reside or residence.

Analyzing those outlined above we can conclude that they can qualify for the activation only those who engage under an individual employment contract concluded on permanent or temporary, but only with normal hours of work, according to legal provisions in force³; It is excluded, thus, working part-time.

B). a). In the context of changes due to the adoption pt. 6 of Government Emergency Ordinance no. 60/2016, art. 75¹ par. 1 and 2 of Law no. 76/2002 will give people who live or reside or establish their new home or new residence areas set out in the National Plan for mobility that is approved and updated by Government decision, the proposal Ministry of Labor, Family, and Social Protection the right to be granted the first employment and first installation - called legal mobility bonuses – which are not cumulative.

The first framing amount taxable, may benefit people registered as unemployed at the agencies for employment and falling labor law, a town located at a distance less than 15 km from the town in which they domicile or residence. This amount of money is granted for a period of 12 months and its amount is calculated at 0.5 lei/km but no more than 55 euro/day, with the number of days that the persons concerned actually pursues the employer at which the employment (art. 74 par. 1, 2 and 3 of Law no. 76/2002).

In order to stimulate employment, insurance costs for living in the new home or new residence, and/or for family reunification, where applicable, persons registered as unemployed at the agencies for employment falling employment law, into another village situated at a distance greater than 50 km from the town of the domicile or residence and, as a consequence, moving house or taking up residence in the respective locality or in neighboring localities they can benefit from a first installation, taxable (art. 75 par. 1 of Law no. 76/2002).

This premium is granted in the amount differentiated usually⁴ so 12,500 lei for people registered as unemployed at the agencies for employment and falling labor law, in another locality

³ The normal duration of working time for employees hired full time is 8 hours per day and 40 hours per week, according to art. 41 para. 3 of the Constitution and art. 112 para. 1 of the Labour Code.

⁴ Notwithstanding the provisions of art. 75 para. 2 and 3 of Law no. 76/2002, if the employer or local authorities or central service provides housing or bearing the cost of employer related funds or public funds, premium is granted in the amount differentiated as follows: 3,500 lei for people registered as unemployed agencies for employment and falling labor law, in another locality and, as a consequence, moving house or taking up residence; 6,500 lei for persons referred to above who are moving house or taking up residence, if they are accompanied by family members, and for single parents, if they are accompanied by a child or dependent children; 3,500 lei for each spouse, if both spouses are eligible for the first installation (art. 75 par. 4 of Law no. 76/2002).

and, as a result of this in fact, moving house or taking up residence; 15,500 lei for persons mentioned above, moving house or taking up residence, if they are accompanied by family members, and for single parents, if they are accompanied by a child or dependent children (art. 75 par. 2 of Law no. 76/2002).

If both spouses are eligible for the first installation, one will receive 12,500 lei and the other will receive an installation bonus amounting to 3.500 lei.

Premium is granted Romanian citizenship to persons who have exercised their right to free movement of workers within the European Union and European Economic Area for a period of at least 36 months (art. 76¹ of Law no. 76/2002).

b). As reflected in art. 75¹ par. 3 of Law no. 76/2002, and in this case can only benefit from early mobility who engage under an individual employment contract concluded on permanent or temporary, full-time but only for a period of 12 months. Consequently, similar to those shown above, are not taken into account employees who work under a program of part-time work.

c). The main changes introduced by Government Emergency Ordinance no. 60/2016 compared to the previous legislation, consist of the following:

- the first employment and the installation is non-taxable amounts (unlike in the past when you do not specify anything in this regard);

- amount of the premium is covered explicitly differentiated (unlike in the past when it reads as follows: first employment was equal to twice the value of the reference social indicator in force on the date of grant; first installation was equal to seven times the value of the reference social indicator in force at the time of installation);

- states that benefit from these first only those who fall in full-time employment for a period of at least 12 months taxable (unlike in the past when it was stipulated that the benefit of these amounts people who employ a for at least 12 months).

3. Measures taken by the Government Emergency Ordinance no. 60/2016 in order to create certain facilities for employers

A). Employers who employ, indefinite, graduates of educational institutions receive monthly over a period of 12 months for each graduate employed, a sum amounting to 900 lei (art. 80 par. 1 of Law no. 76 / 2002).

The same amount is paid monthly – for a period of 18 months – for each graduate and employers that hire graduates of indefinite duration for persons with disabilities (art. 80 par. 2 of Law no. 76/2002).

The amount outlined by the above texts is charged employers beneficiaries and where, during the grant or the period during which no legal obligation to maintain the service, graduates of educational institutions of disabled people do not have status disabled (art. 80 par. 4 of Law no. 76/2002).

Incentives provided for in art to Summary. 80 of Law no. 76/2002 shall be granted for periods in which labor relations are suspended. So, it is granted in proportion to the actual time worked graduate and for periods during which the person is on annual leave (art. 81 par. 1 and 2 of Law no. 76/2002).

B). Employers who employ on a permanent unemployed aged over 45, unemployed single parent of single parent families, long-term unemployed or young people NEET⁵ receive monthly over a period of 12 months for each employee of these categories, a sum amounting to 900 lei, with the obligation to maintain employment relationship at least 18 months (art. 85 par. 1 of Law no. 76/2002).

Enjoy the same facilities and employers in relation to number of employees, their fulfill legal obligation to employ persons with disabilities and employers who do not return this duty legally, if

⁵ Younger aged between 16 and 24 who do not have a job, are not in education and not participating in training activities (art. 5 pct. IV⁴ of Law no. 76/2002).

you employ indefinite disabled people and keep them working relations at least 18 months (art. 85 para. 2 Law no. 76/2002).

These facilities are granted to employers and where, during their grant or that there is a legal obligation to maintain the service, eligible persons no longer have the status of a single parent breadwinner parent or status of persons with disabilities if applicable (art. 85 par. 3 of Law no. 76/2002).

C). These incentives are granted only if it concludes an individual employment contract of indefinite duration with working full time or part of the law making no distinction. It is conceivable, therefore, the individual employment contract concluded for a fixed.

4. Measures taken by the Government Emergency Ordinance no. 60/2016 in order to establish certain penalties consisting ordered both employees and employers to fully repay the amounts received if the conditions imposed

A). a). Employees are required to repay the full amount received for the first activation, according to art. 73² of Law no. 76/2002, where the employment relationship is terminated, in a period less than 3 months from the date of employment, under the following provisions of the Labor Code: art. 55 lit. b (termination of individual employment contract as a result of the agreement of the parties, the date agreed upon by them), art. 56 para. 1 letter f (following the conviction to execution of a custodial sentence, the date of the final judgment) and h (due to the prohibition to practice a profession or function as a safety measure or complementary punishment, from the date of the final court decision ordering the ban), art. 61 lit. a (termination of individual employment contract if the employee has committed a serious or repeated violations of the rules of labor discipline or those set by individual employment contract, collective agreement or applicable bylaw as a disciplinary sanction) and b (if the employee is taken into custody or placed under house arrest for more than 30 days, under the Code of criminal procedure) and art. 81 (resignation); art. 31 para. 3 (termination of the individual employment during or at the end of the probationary period, if the termination is at the initiative of the employee).

Art. 76 para. 1 of Law no. 76/2002 establishes the obligation to repay the full amount employees received under the provisions of art. 74 of Law no. 76/2002 (first employment) and art. 75 of the same law (first installation) if the employment relationship is terminated, in a period less than 12 months from the date of employment, under the following provisions of the Labor Code: art. 55 lit. b; art. 56 para. 1 letter f and h; art. 61 lit. a and b; art. 81; art. 31 para. 3 where termination is at the initiative of the employee.

More employees are required to repay the full amount received as installation premiums, according to art. 75 of Law no. 76/2002, where the old return to the old home or residence in a period of 12 months of employment (art. 76 par. 2 of Law no. 76/2002).

B). The employers who terminate employment relationships of persons referred to in art. 85 para. 1 and 2 of Law no. 76/2002 previous 18 months are required to repay, in full, for employment agencies amounts collected for each person who has ceased employment relationship prior period, plus reference rate of the National Bank of Romania in force date of termination of employment, if their termination took place for reasons provided in art. 83 para. 2 of Law no. 76/2002, namely: termination of employment under art. 55 lit. b (termination of individual employment contract as a result of the agreement of the parties, the date agreed upon by them), art. 56 lit. d (following the finding of nullity of the individual labor contract, the date on which the invalidity has been established by agreement or by final judgment) and e (as a result of the request for reinstatement to the position occupied by an employee of a person dismissed unlawfully or for the wrong reasons, the date of the final judgment reintegration), art. 61 lit. d (dismissal for unsuitability vocational) and art. 65 (dismissal for reasons not related to the employee) of the Labour Code.

5. Conclusions

From setting up the legal regime applicable to the following conclusions highlighted.

A). Failure measures in stimulating internal mobility of employees and the stimulation of employment would generate negative consequences for economic and social environment - Whereas the measures imposed concerns public interest and represent elements of an emergency and extraordinary, the regulation of which cannot be postponed.

B). Even though the changes and additions made while the Labour Code, has achieved a flexibile the legal regime applicable to the individual employment contract of limited duration and that concluded with while working partially, as otherwise noted in legal doctrine⁶, however, the analysis texts mentioned, we note that employers who hire employees based on these types of agreements do not benefit from the legal facilities.

By clearly specifying the legal regime stimulates the conclusion of the individual contract of indefinite duration – what constitutes employee safeguard having the duty to guarantee the right to stability in employment, and the employer to confer the possibility to plan and organize them more good work, to shape and improve staff qualifications.

C). Between cases where employees are required to repay the full amount received does not appear and the case provided by art. 56 lit. d of the Labour Code, according to which the individual contract of employment is terminated by right "following the finding of nullity of the contract, the date on which the invalidity has been established by agreement or by final judgment", while the cause of invalidity should be yourself wrongful act of the employee.

Also between those situations liable within the duty refund shall not be retained art. 61 lit. d of the Labour Code, under which an employer may dismissal "if the employee does not correspond professional job to which he belongs." It stresses therefore that not retained culpa employee if fired for professional unfitness, as held legal doctrine⁷.

D). In connection with the employer's obligation to repay the state that is well founded, it affects all possible cases.

Bibliography

1. I.T. Ștefănescu, *Modificările Codului Muncii – comentate*, Publishing House Lumina Lex, Bucharest, 2006,
2. I.T. Ștefănescu, *Tratat teoretic și practic de drept al muncii*, 3rd ed. revised and enlarged, Publishing House Universul Juridic, Bucharest, 2014,
3. Law no. 76/2002 on the unemployment insurance system and employment stimulation, published in the Official Gazette, Part I no. 103 of February 6, 2002, as amended,
4. Government Emergency Ordinance no. 60/2016 amending and supplementing Law no. 76/2002 on the unemployment insurance system and employment stimulation, published in the Official Gazette, Part I no. 773 of October 4, 2016,
5. Labour Code, republished in the Official Gazette, Part I no. 345 of 18 May 2011, as amended.

⁶ To be seen I.T. Ștefănescu, *Modificările Codului Muncii – comentate*, Publishing House Lumina Lex, Bucharest, 2006, p. 102; I.T. Ștefănescu, *Tratat teoretic și practic de drept al muncii*, 3rd ed. revised and enlarged, Publishing House Universul Juridic, Bucharest, 2014, p. 541-542.

⁷ I.T. Ștefănescu, *op. cit.*, 2014, p. 441.