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July 25, 2008

## **Proposed amendments to the labor and social security legislation**

The legislative framework governing social security and employment relationships impacts the competitiveness of the labor market and is influencing the development of the Romanian society and Romania at large. AmCham's Labor, HR and Education Committee noticed that certain legislative provisions are restrictive and do not match the dynamics of the labor market and the needs generated by the social transformations.

The main objective of the recommendations made below by AmCham Romania is to improve the business environment to the benefit of employees and employers.

Concerned with the need of increasing the Romanian labor market flexibility, competitiveness and attractiveness by adapting the legal framework to ensure adequate labor force, AmCham Romania proposes the following measures:

1. Reduce administrative burden to observe and enforce labor legislation for all stakeholders involved: public authorities, employees, employers, etc.;
2. Rebalance the position of social partners through the reconfiguration of the Economic and Social Council (CES);
3. Simplify procedures and reduced bureaucracy related to hiring and firing, such as:

### **Dismissal procedures**

Dismissal procedures in case of disciplinary infringement, professional incompetence, lack of performance, and restructuring of positions are very complicated and often overprotect the employee.

We suggest the elaboration, in partnership with the business community, of a limited number of clear and concise dismissal procedures, to shorten and improve the dismissal procedures, thus avoiding abuses and cutting current excessive bureaucracy.

## **Hiring procedure**

The hiring procedures are also complicated and resource-consuming. The business community would welcome simplified hiring procedures, starting with the electronic format of the work books, to be transferred and amended based on electronic requests, thus eliminating the need of physical presence.

## **Procedures of Registration with the Territorial Labour Inspectorates**

The current provisions of the Labour Code provide for bureaucratic and time-consuming procedures of registration with the Territorial Labour Inspectorate (“ITM”). We consider the time-limits for the registration of any addenda and termination decisions regarding employment contracts to be very short (5 days) compared to the time-limits for the registration of employment contracts (20 days). Thus, we recommend that all time-limits for the registration with ITM should be established at least at 20 business days.

Also, given the complicated legislation, the business community would welcome a campaign run by the Ministry of Labor to educate the ITMs to have the same understanding and interpretation of legislation, thus avoiding situations when different ITMs have different views and interpretations of the same legal provision.

## **Disciplinary procedures**

In general, the disciplinary procedures are very formal and long lasting. In particular, the disciplinary procedure must be observed even in case of flagrant severe disciplinary infringement committed by the employee, without allowing the employer to use a simplified procedure. In addition, according to the latest amendments of the Collective Bargaining Agreement, the employee cannot be given a notice without observing the disciplinary procedure.

Consequently we consider appropriate to have the above mentioned dismissal and disciplinary procedures amended, in the sense of simplifying them.

4. Introduce flexible working engagements (flexible approach related to determined period employment contracts, temporary agency work, part-time individual work contract, work at home). Flexible work arrangements for parents;

## **Determined period employment contracts**

The employment contracts concluded for a determined period of time are inflexible, in what concerns the motivation to be provided for their execution (as the Labour Code provides limited cases in which an employment contract may be concluded for a determined period), the duration of such contracts (which is limited to 24 months, while in practice projects could last i.e. between 3 and 5 years), and the duration of the probation period (which is disproportioned in comparison with the contracts concluded for an undetermined period). We recommend that the above mentioned limits related to the instances when such contracts may be used be eliminated, as well as the maximum duration of fixed period employment contracts and the maximum number of possible amendments, in order to allow the business community fully tap the development potential.

## **Consecutive leisure days**

The current provisions of the Labour Code do not allow flexibility regarding the leisure days. Thus, under current regulations, employers and employees cannot agree on non-consecutive leisure days, even if such arrangements might be more favorable for the employee. We consider that this is an issue for many students working part-time or full-time who cannot organize their working time, with the employer’s agreement, in such manner as to both work and attend classes. Consequently we recommend amending these provisions by eliminating the obligation of granting consecutive leisure days.

### **Annual leave**

Also, the Labour Code provides restrictions as to the annual leave of employees, stipulating that employees must benefit of their annual leave for at least 15 consecutive business days, and the period in which they benefit of their annual leave cannot exceed 3 months. We are of the opinion that these provisions, considered both to the advantage of the employee and of the employer, diminish the flexibility of working engagements as, on the one hand, the employee cannot benefit from the days of the annual leave in fractions of less than 15 consecutive business days, and, on the other hand, the employee cannot benefit from the days of the annual leave spread over the entire calendar year (i.e. both on Easter (April-May) and Christmas (December)). We consider that amending the Labour Code provisions by allowing greater flexibility of the annual leave would benefit both the employers and the employees.

### **Compensation of overtime**

In addition, we consider that the term in which the employees may benefit of days off before being granted additions to the salaries for the overtime should be extended to more than 30 days. Thus, we recommend implementing, without affecting the current provisions of the Labour Code, a system that allows employees who worked overtime to opt for cumulating the hours spent overtime in a certain period (i.e. one year's period), and convert them in consecutive hours/days off.

### **Temporary/flexible changing of position**

Moreover, the provisions regarding the amendment of the employment contract by changing the position of the employee prove to be inflexible and cannot be adapted to the situation where the employer wants to offer the employee a higher-ranked position within the company, but stipulate in the agreement that in case the employee does not correspond to this higher-ranked position, the employee shall return to his former position.

### **Alternative types of employment contracts**

In line with the efforts to increase the flexibility of the labor market, self-employment and apprenticeship should get more attention from the authorities, as they provide efficient ways to solve economic situations. There is an increased number of activities that imply work at home, but given the bureaucracy and the cumbersome mechanism, self-employment is not always an efficient option. We recommend that self-employment be made more flexible, through an increased area of applicability and reduced bureaucracy.

As well, the apprenticeship contracts should be made applicable to other types of activities too, such as students' internship stages or re-qualification, further qualification programs supported by the employer.

### **Probation period**

We consider that the parties should be allowed to negotiate the probation periods, and an upper limit should be set, at 6 months, for instance.

5. Simplify access procedures for non-EU country citizens to the Romanian labor market;
6. Simplify and clarify conditions for posting workers intra and extra EU, Romanians and foreigners equally;
7. Simplify the up-dating procedures of the Romanian Job Classification (COR = Clasificarea Ocupatiilor din Romania);

Given the cross-cutting impact of the labor and social security related legislation, we recommend that the Ministry of Labor, together with the Ministry of Economy and Finance, take measures to:

8. Increase competitiveness of the legislation governing applicability of employees' and dependents' benefits, such as pension benefits, saving plans, insurance plans, dental plans, school allowances for children, housing allowances, service package for child and/or dependent care;
9. Cap all social and health contributions at a reasonable level, such as up to 5 average salaries;
10. Reintroduce the 2 year childcare indemnity of 85% of the average salary considered for social insurance contributions. For law income parents, keep the current level of indemnity;
11. Stimulate employers to provide annual professional trainings by exempting them from paying unemployment contributions;

As well, even if in the hands of the Ministry of Education, the private sector appreciates the support of the Ministry of Labor to introduce measures to:

12. Stimulate business community's involvement in students' formation process over the study years at under-graduate, graduate and post-graduate levels, in order to improve their readiness and employability at graduation;
13. Introduce mandatory 2 to 3 month internship stages in the curricula, to take place anytime during the school year, a necessary condition to improve students' employability at graduation. At the same time, an up-date of the legislative framework governing internship stages is mandatory.
14. Strengthen professional counseling services in schools and universities;
15. Introduce classes on labor legislation, rights and obligations of employee and employer;
16. Change to simplify the curriculum – starting with the primary school – and reintroduce the exam based high school entrance, dropping the current system that takes into account the yearly average grades;
17. Plan graduate education in the long run, covering both the number of graduates and the majoring fields;