E-ISSN: 2360 – 6754; ISSN-L: 2360 – 6754

European Journal of Law and Public Administration

2019, Volume 6, Issue 2, pp. 259-267

https://doi.org/10.18662/eljpa/103

LEGISLATIVE CHANGES AND PRACTICAL ASPECTS REGARDIND DAY LABORERS IN ROMANIA

Maria Cristina BĂLĂNEASA

Covered in:

CEEOL, Ideas RePeC, EconPapers, Socionet, HeinOnline

Published by:
Lumen Publishing House
on behalf of:
Stefan cel Mare University from Suceava,
Faculty of Law and Administrative Sciences,
Department of Law and Administrative Sciences

LEGISLATIVE CHANGES AND PRACTICAL ASPECTS REGARDIND DAY LABORERS IN ROMANIA

MARIA-CRISTINA BĂLĂNEASA[1]

Abstract

In this article I will discuss the problem of one of the atypical forms of work, that of the day workers, the main purpose being to identify the changes that took place on the text of the normative act, between 2011-2019.
Also, in order to achieve a better monitoring on the observance of the law of the day workers, I will also present briefly the results of the control carried out by the Territorial Labour Inspectorate of Suceava on this subject for the year 2018, in order to identify those legal provisions that are frequently violated, intentionally or at fault, by the beneficiaries of the day workers' activity.

Keywords:

Day worker atypical work report, seasonal activity, unskilled work, control activity

Classification JEL*:* J51, J52, J 53

1.The day workers' activity– a necessary measure to make work relationships more flexible and combat undeclared work in Romania

In order to cover the legislative vacuum in the field of occasional work and to reduce the work without legal forms, it was adopted the Law no. 52/2011 regarding the exercise of occasional activities carried out by day workers [5]. The day workers' law is the most flexible employment tool for both beneficiaries and day workers by eliminating bureaucratic administrative procedures for registration, as well as facilitating the employment and cease of employment relationships.The aforementioned law aims to make flexible and simplify the employment procedures for day

[1]Lecturer Ph.D."Ştefan cel Mare"University of Suceava, Romania, Faculty of Law and Administrative Sciences , cristina.balaneasa@fdsa.usv.ro

workers for certain exclusively unqualified activities, into areas limited by law, but also to reduce illegal work cases [1].

As the Work Inspection statistics show, this normative act has also led to the reduction of cases of unqualified work without legal and non-supervised forms, when, in practice, undeclared work has been shown to be manifesting itself by illegally using day workforce.

Therefore, day work activity represents a derogation from the provisions of Law no. 53/2003 of the Labor Code, the forms of employment in this case are simplified, with no need for an employment contract and formalized procedures of registration at the territorial work inspectorates [6].

The author I.T.Stefanescu questions the existing opinions in the specialized literature on the legal source of the relationship between the day worker and the beneficiary of a civil contract or individual employment contract of a particular character. He concludes that the activity carried out by the day worker is not based on a civil contract but points out some minuses that the law still has, such as: the lack of a concrete qualification by law of the legal nature of the day work contract, the rules regarding dismissal, of the applicability in this area of the collective work contract to the extent of its existence, but also the regulations on work jurisdiction [2] [3] [4]. All these constitute the author's perspective landmarks of future changes required to achieve adequate regulation in this area.

So, the labor reports of the day laborers are atypical because their source is not the individual labor contract itself, but the agreement of the parties, derived from Law no.52/2011.[3]

2.2. Amendments to the Law no. 52/2011 regarding the exercise of occasional activities carried out by day workers.

This normative act has undergone, depending on the economic-social and political situation, a series of successive changes through the following normative acts:

- Law no. 277/2013
- Law no. 18/2014 and OUG no.36/11.06.2014
- GEO no. 114 /2018
- GEO no.26/2019

2.2.1. Amendments made by Law no. 277/2013

As shown in the explanatory note of the government [12], considering that the daily work involves the carrying out of unqualified

activities of occasional character for a legal entity as a beneficiary, the adoption and implementation of this normative act had as a consequence the increase of the employment degree on the labor market, of people who do not have a professional qualification or lack education. Since the publication of Law no. 52/2011, respectively April 15, 2011, the number of registered day workers between 01.05.2011 - 31.12.2012 was 341,330 and during 01.05.2011 - 30.03.2013 of 368,764.

The law in its initial form raised a number of problems in the implementation concerning the health and safety of the day workers, the protection of the minors who carry out daily work, the areas in which the unskilled work can be carried out on an occasional basis. As a result, through Law no. 277/2013, the beneficiary's area of works was extended so that the daily workforce could be used, in addition to the legal person, also by the authorized natural person and the entrepreneur, the natural person who is the owner of the individual enterprise, or of the family entreprise. In view of the legal framework in force that restricts the employment of personnel in public institutions and to prevent circumvention of the law from this point of view, they have been exempted from applying these provisions [7].

Another novelty is that the law creates the possibility of children between the ages of 15 and 16 to perform unqualified activities on an occasional basis only with the consent of the parents or legal representatives and only for activities appropriate to their physical development and the skills they demonstrate, without violating their right to physical, mental, spiritual, moral and social development, the right to education and endangered health status, and the agreement of the parents / legal representatives is expressed in authentic form specifying the activities to be carried out by the minor / minors and are recorded by the beneficiary in the register; this completion leads to a better individualization of the legislator's requirements regarding the possibility of children to carry out occasional unqualified activities.

The possibility of paying the day worker is created by using the electronic means of payment as well as the possibility of making the payment at the end of the week only with the agreement expressed in writing by the day worker and the beneficiary; the obligations in the field of occupational safety and health are incumbent on the beneficiary as well as on the individual who carries out unqualified activities.

The minimum value of the amount of the negotiated gross hourly remuneration cannot be below the value / hour of the minimum gross basic wage per country guaranteed in the payment which, according to the Government Decision no. 23/2013, was of 4.44 lei / hour until June 2013 and of 4.74 lei / hour starting with July 1, 2013. This amendment aimed to

achieve the protection of the minimum level of daily income that could not be lower than the value / hour set for the minimum gross basic wage in the country guaranteed in payment.

The sanction regime that concerns the acts committed by the beneficiary is supplemented with the one concerning the prohibition of the beneficiary to hire day workers to carry out activity for the benefit of a third party, aiming to prevent abuses that could occur in the area of workforce used as day work regime which would mean the diversion from the purpose proposed, respectively the fact that the day worker executes unqualified activities with occasional character for the beneficiary.

For occasional work, the law introduces new contravention sanctions for the beneficiary who uses day workers in other activities that involve unskilled work compared to those expressly provided by the law.

2.2.2. Amendments made by Law no. 18/2014, by GEO no.36/11.06.2014 and GEO no. 114 /2018

By Law no. 18 / 2014- from the sphere of legal persons benefiting from the day workers' activity were eliminated the public institutions, with the exception of [8]**:**

a) The communal management services managed directly by the local councils, such as greenhouses, green spaces and zoos and the units subordinated to the Ministry of Youth and Sport - the county departments for sports and youth, respectively the Directorate for Sport and Youth of the Municipality of Bucharest - which organize in the centers national recreational camps, recreational camps, social camps, themed camps for children, students and young people, as well as camps for people with disabilities and camps for the Olympics, will no longer be able to use day workers for the day-to-day activity, in the same situation being the institutes, centers and stations of agricultural research and development, subordinated to the Academy of Agricultural and Forestry Sciences "Gheorghe Ionescu-Sisesti", which can no longer be the beneficiary for the unskilled work with occasional character for the fields of agriculture and forestry.

b) Units subordinated to the Ministry of Youth and Sport for the following areas: hotels and other accommodation facilities; accommodation facilities for holidays and short periods - children's camps (organized by the Ministry of Youth and Sports, directly or through units subordinated to it); accommodation facilities for holidays and short periods - cottages; activities of sport grounds and sport clubs.

c) The Academy of Agricultural and Forestry Sciences "Gheorghe Ionescu-Șișești" and the institutes, research centers and development stations under its subordination, of the State Institute for Testing and Registration of Varieties under the subordination of the Ministry of Agriculture and Rural Development, as well as of the county offices of pedological and agrochemical studies for the following fields: agriculture, hunting and related services; forestry, except for exploitation; fishing and aquaculture.
d) Public institutions authorized to carry out archaeological researches, according to the existing norms in the field, respectively universities, research institutes, institutions with a museum profile, for archaeological excavations.

Another significant change made by GEO no. 114/2018 was to restrict the areas in which the unskilled work with occasional character can be rendered to a number of 3 areas out of the 23 [9]. The 3 remaining areas were:

a) agriculture, hunting and related services;
b) forestry, except for logging;
c) fishing and aquaculture.

Regarding the duration of the activity of a day worker, the initial form of the law stipulated that no day worker can perform activities for the same beneficiary for a period longer than 90 days accumulated over a calendar year. Through GEO no.114/2018 a person cannot perform day work activities for more than 120 days during a calendar year, regardless of the number of beneficiaries, except for the days for activities in the field of animal breeding in an extensive system through the seasonal grazing of sheep, cattle, horses, seasonal activities within the botanical gardens, subordinated to the accredited universities, as well as in the viticulture field, for which the period can be 180 days during a calendar year.

Through the GEO 114/2018, the beneficiary cannot use an individual for more than 25 calendar days continuously in day work activities. If the day worker's activity requires a period of more than 25 days, the day worker can be used on the basis of a fixed-term employment contract.

A new sanction is introduced. Thus, the day worker is sactioned with a fine from 500 lei to 2,000 lei by the failure to comply with the provisions regarding the duration of day work regime activity.

2.2.3. Amendments made by GEO no. 26/2019

Starting with May 1, 2019, the categories of activities that can be performed by the day workers are extended to 12 areas, thus reintroducing 9 fields removed in 2018 [10]. The reasons invoked by the Government in the Explanatory Note for GEO 26/2019 are acute lacking of the personnel faced by the employers, as well as by the specificity of certain activities, which involve the use of unskilled work, with a seasonal, occasional and relatively short-term character, and that the day worker is deprived of the rights conferred by the obligatory public system of social insurance [11].

In addition to the 3 areas established by GEO 114/2018, the new ones in which the daily workers can be employed are:

- activities for organizing exhibitions, fairs and congresses;
- advertising;
- activities of artistic interpretation - performances, activities-support for the artistic interpretation - performances and activities of management of the theaters;
- breeding of semi-domestic animals and other animals;
- catering activities for events;
- landscape maintenance activities - planting, maintaining and maintaining parks and gardens, with the exception of private housing;
- restaurants;
- bars and other drinks serving activities;
- activities of zoos, botanical gardens and nature reserves.

The Government's Explanatory Note invokes data on the statistics of daily work in these areas from the Labour Inspection Activity Report. For example, in activities of artistic interpretation - performances, support activities for artistic interpretation, performances and management activities of the theaters - 83,455 day workers - 1,208,692 days; advertising - 75,578 day workers - 1,563,198 days; catering activities for events -22,572 day workers - 182,374 days; restaurants - 15,889 day workers - 149,218 days; for organizing exhibitions, fairs and congresses - 7,881 day workers -51.125 days; bars and other beverage services - 2,723 day workers - 21,653 days; breeding and breeding of semi-domestic animals and other animals - 1,748 day workers - 33,062 days[11].

By GEO 26/2019 it was established that ”no day worker could perform activities for the same beneficiary for a period longer than 90 days accumulated during a calendar year, except for the day workers who carry out activities in the field of agriculture, the raising of animals in an extensive

system through seasonal grazing of sheep, cattle, horses, seasonal activities within the botanical gardens subordinated to the accredited universities, as well as in the viticulture field; in their case, the period may not exceed 180 days accumulated over a calendar year."It returned to the initial 90-day form.

Another novelty brought by GEO 26/2019 is that the compulsory contribution to the social insurance pensions has been established with the 25% percentage of the daily income, the calculation, payment and declaration of the social insurance contribution due to the budget of the state social insurance for the incomes from the activity carried out by day workers are the responsibility of the beneficiary.The day workers are not insured in the health system, in the system for accidents at work and occupational diseases [10].

2.3. Results of the control activity carried out by the territorial labour Inspectorate of Suceava, at the units that employ day workers (for the year 2018)

According to data provided by Territorial Labour Inspectorate of Suceava [13], on November 16, 2018, for the day workers' activity, in September 2018, the mentioned institution carried out the national campaign, regarding the observance by the beneficiaries of the provisions of Law no. 52/2011, regarding the exercise of occasional activities carried out by day workers, and of the legal provisions regarding the prevention and combating the exploitation of young people, through work in these areas.

The objective was to identify the beneficiaries who use day workers, and to take the necessary measures for their non-compliance with the legislation as well as to increase the awareness of the beneficiaries and the day workers regarding the necessity of applying and observing the legal provisions, in the field of work relationships, security and occupational health, established by Law no. 52/2011.

The purpose of the campaign was also to determine the beneficiaries to comply with the obligation to set up, complete the register of day workers and to send an extract of it to the Territorial Labour Inspectorate in which the company has its headquarters, within the term provided by law.

The labour inspectors checked a number of 28 beneficiaries, a number of 157 of their day workers were verified.

Following these controls, a number of 7 sanctions were applied.

Among the deficiencies found in the field of labour relationships, the institution mentioned the following:

- Day workers were unregistered in the register;
- Gross hourly wage was less than the hourly value of the minimum gross wage in the country;
- No extract from the Registry of Day Workers was sent to Territorial Labour Inspectorate of Suceava, until the 5th of each month.

Conclusions and proposals

Day work activity is an exception from the provisions of Law no. 53/2003 of The Labour Code, the forms of employment in this case are simplified, there is no need for a conclusion of an employment contract but only its registration in the Registry of Daily Records. This type of work was a response both to the urgent needs of the beneficiaries of unskilled workforce, which operates in the branches of the national economy listed by the law of the day worker , as well as to the financial needs for living of the people without a certain qualification. During the application of the law, from 2011 until now, the legislation has been subject to a continuous modification regarding the quality of beneficiary, so that, if in 2011 only legal entities could have the status of beneficiary of day workers, in 2013 their scope was extended also to the authorized natural person, natural person who owns the individual enterprise or the family enterprise.

Also the duration for which a day worker can carry out such a type of work for the same beneficiary or different beneficiaries during a calendar year has been modified successively, so that if such work was required for a longer period of time, the employment contract for a certain period of time would be the solution.

The significant changes took place, as we found, also regarding the fields of activity as well as the obligation from May 2019 to pay the 25% contribution to the social insurance budget calculated on the daily or weekly income of the day worker.

As some deficiencies were found through practicing controls in the field of labour relationships, such as unrecorded day workers in the register, gross hourly payment less than the hourly value of the gross minimum wage in the country and the fact that no extract of the Registry of Daily Records kept by the beneficiary in scripted format was submitted until the 5th of each month to the labour inspectorates, it is urgently required to comply with the provisions of GEO 26/2019 regarding the establishment of the Electronic Registry of Daily Records starting with December 20, 2019. Practically this register would be one similar to the REVISAL(The

Electronic Employee Registry), a mirror of the clauses inserted in the atypical report of day workers' activity.

REFERENCES

[1] Bălăneasa MC. The management of atipical relationship between day laborers and beneficiaries, The USV Annals of Economics and Public Administration, Editura Universităţii Ştefan cel Mare din Suceava; 2017, 17, Issue 1(25): 192.
[2] Ştefănescu IT. Day workers'individual employment contract in Romanian Work Law Magazine 2014, No 4.
[3] - Ticlea A. Labor law. University course. Bucureşti, România: Universul Juridic; 2019.
[4] Țop D. Necesitatea unor reglementări corespunzătoare a formelor de muncă atipică în România. Available at: https://www.universuljuridic.ro/necesitatea-unor-reglementari-corespunzatoare-formelor-de-munca-atipica-romania/2/, https://lege5.ro/Gratuit/ge3dsmrzg42q/necesitatea-unor-reglementari-corespunzatoare-a-formelor-de-munca-atipica-in-romania ;
[5] Legea nr. 52/2011privind exercitarea unor activităţi cu caracter ocazional desfăşurate de zilieri
[6] Law no. 53/2003 of the Labor Code
[7] Law no. 277/2013
[8] Law no. 18/2014 and OUG no.36/11.06.2014
[9] GEO no. 114 /2018
[10] GEO no.26/2019
[11] Guvernul României. Nota de Fundamentare - OUG nr. 26/18.04.2019. Available at: http://gov.ro/ro/guvernul/procesul-legislativ/note-de-fundamentare/nota-de-fundamentare-oug-nr-26-18-04-2019&page ;
[12].http://sgg.gov.ro/legislativ/docs/2013/05/g5ks4_18rp2q6v3mntyz.pdf
[13] www.itmsv.ro