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Particularities of Temporary Work. Advantages and Vulnerabilities

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Abstract: Temporary work is an alternative to providing the activity and procuring external, current labor force, more and more common in the countries of the European Union, including Romania. The alternative of such work is beneficial to all parties involved in the triangular employment relationship: the temporary work agent, the temporary employee and the user of the temporary workforce. This article proposes a brief presentation of some theoretical aspects related to temporary work (the importance of temporary work in today's society, the Community and national legislative framework, the actors of the temporary work relationship and the relationship between them, such as listing the conditions and authorization of the employee temporary in Romania) followed by an analysis on the evolution of employment agents registered in Romania in the period 2007-2021.

Keywords: *temporary work, temporary work agent, user, flexibility*

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1. The concept of temporary work and its importance in achieving flexibility in employment relationships

Temporary work is the work performed by a temporary employee, who, at the disposal of the temporary work agent, performs the work in favor of a user (Dimitriu, 2008). The temporary employee is the person employed by a temporary employment agent, made available to a user for the time necessary to perform precise and temporary tasks (Marica, 2019).

Also known as staff leasing, both in doctrine and by human resources specialists, this type of work has become a strong trend in Romania as well, more and more large companies are taking it into account, although there are opinions that say that in times of economic crisis only very profitable companies can still afford to work with temporary agents, because there are high expenses in between, related to the commission negotiated in the contract for the provision of temporary employees. At the same time, there are opinions that say that the crisis and the financial difficulties should lead to working with temporary work agents, especially if they provide professional temporary employees (Nicuţar, 2015).

The service provided by the temporary work agent is an advantageous solution especially for companies that are in one of the following situations: they carry out a project and need employees for a certain period, they work in fields with a high seasonality and they need more staff at certain times of the year, or they are at the beginning of the activity or have just started a new project and cannot estimate the profit of the newly started activity and cannot hire for indefinite periods (BIA-Business Intelligence Alliance, 2020).

Temporary employment, one of the ways proposed at European level to make employment relations more flexible, aims to diversify employment relationships and increase the number of jobs for employees (Suciu & Ion, 2020).

On the other hand, temporary work also generates a number of vulnerabilities and risks for temporary employees related to: social protection, precarious employment and working conditions, job insecurity, low level of compensation, lack of promotion prospects, suspension of employment contract work, dismissal, etc. The collective labor agreements

concluded in Romania do not address the issue of temporary employees at all (Marica, 2019).

2. European and internal legislative framework on temporary work

The Directive 2008/104/CE (European Parliament & European Council, 2008) was adopted on November 19, 2008, in order to establish a harmonized framework at European Union level (to reduce disparities in the status of temporary staff, registered in the employment systems of the Member States, to provide equal treatment of temporary staff in relation to regular employees and in terms of employment conditions (Marica, 2019).

Paragraph 1 sets out its purpose: "The Directive respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union and is designed to ensure full compliance with Article 31, which provides that every worker has the right to healthy working conditions, security and dignity, to a limitation of the maximum working hours, to periods of daily and weekly rest, as well as to an annual period of paid leave".

This work governs a triangular legal relationship, in which the worker carries out his activity not for the benefit of the one who hired him, but for the benefit of a user for whom he is sent to work.

"The position of this worker is very special: he cannot negotiate individually with the user, because he is not part of a contractual relationship with him, he cannot show solidarity with his colleagues, direct employees of the user, because he has another employer than them, but also vice versa, he cannot be disciplined by the user nor dismissed by him" (Dimitriu, 2018).

Regarding the internal legal regime of temporary work, the regulation of temporary work and the contracts under which it is performed can be found in:

- *Labor Code* (Romanian Parliament, 2003), art. 88-102, substantially amended in 2011 and in terms of this category of work;

- *G. D. no. 1256/2011* (Government of Romania, 2011)on the operating conditions as well as the authorization procedure for the temporary work agent;

- *Order no. 208/08.02.2012* (Minister of Labor, Family and Social Protection, 2012) for the approval of the Instructions regarding the authorization procedure of the temporary work agent, in order to apply the G. D. no. 1256/2011.

The current internal rules on temporary work do not fully meet the current needs of the parties involved in the triangular employment relationship, with some shortcomings and inaccuracies in relation to European Parliament Directive 2008/104 / CE of 19 November 2008 on temporary work.

Thus, if prior to the amendments operated by Law 40/2011 (Romanian Parliament, 2011), the quality of temporary work agent could have only a legal entity authorized by the Ministry of Labor, Family and Social Protection, after adopting the amendments the scope of persons who can acquire the quality of temporary work agent expanded, including all legal entities, including public institutions, non-governmental organizations, etc (Marica, 2019).

The temporary work agent concludes temporary work contracts with temporary employees, in order to make them available to the user, to work for the period established by the provision contract under his supervision and management.

There was a discrepancy between the two categories of rules, Directive 2008/104 / CE and the Labor Code. But the European norm has a higher degree of comprehension; the natural person can also be a temporary work agent (Țiclea & Georgescu, 2019).

That being the case, the national law should have been adapted accordingly, meaning that the temporary agency worker could be any natural or legal person who concludes employment contracts or employment relationships with temporary workers, to make them available to user undertakings, to work temporarily under their supervision -article 3 paragraph 1 letter b of the Directive 2008/104/CE (Naubauer, 2011).

Instead, according to art.88, paragraph 4 of the Labor Code, the user is the natural or legal person for whom and under the supervision and management of which an employee works temporarily, provided by the temporary work agent.

3. The performers of the temporary employment relationship

There are three performers in the temporary employment relationship: the temporary employment agent, the temporary employee and the user.

Two contracts are concluded between the performers of the temporary employment relationship (Dimitriu, 2018):

A) Temporary employee-temporary work agent - a temporary employment contract is concluded between these two parties.

The contract can be concluded for a determined or indefinite period, the employee being temporary in relation to the work role of maximum 24 months with the possibility of extension to maximum 36 months. By concluding a contract of indefinite duration between two assignments, the employee is at the disposal of the temporary work agent, in practice he may even be in the situation of requiring the employee to apply for unpaid leave.

The contract of indefinite period is considered as a framework contract that is materialized for each mission, through the contract for a determined period (Ştefănescu & Beligrădeanu, 2011).

Therefore, it is possible to conclude two employment contracts between the same parties: one temporary for each role and another for an indefinite period. Being a temporary contract, it will have certain clauses specific to the individual fixed-term employment contract (Anescu & Anescu, 2005).

Being a contract that is concluded during a mission, its content is made up of three categories of elements (Ţiclea, 2014):

-general elements that form the content of any individual employment contract aiming at the activity carried out abroad;

-specific elements of the temporary employment contract (conditions for carrying out the role, duration of the role, identity and location of the user, knowledge and method of remuneration of the temporary employee).

The Labor Code also stipulates that a temporary employment contract may be concluded for several assignments within the maximum period of 36 months.

B) User – temporary work agent, the provision contract is concluded between these two parties.

"Practically, the user outsources all the activity of recruiting and hiring staff, he has no obligation to keep the Register of employees and, in general, no bureaucratic obligation in relation to his personal employees. All these obligations are exercised by the temporary work agent, in exchange for a price that the user has the obligation to pay to him, under the provision contract" (BIA, 2020).

C) User – temporary employee, there is no contractual relationship between these two parties, this contractual relation exists exclusively with the work agent who pays his salary and for whom he is disciplinary liable.

G. D. no. 1256/2011 (Government of Romania, 2011) in art.19-20 lists the following obligations of the user in relation to temporary employees:

a) to inform them about the existing vacancies, in order to ensure the principle of equal opportunities with other employees with individual employment contracts of indefinite duration to the user, in order to obtain a permanent job. To this end, the user will be able to display a general announcement in a place visible to all employees who work for the user;

b) to ensure to the temporary employee the access to professional training courses that he organizes for his own employees;

c) to make available to the employees' representatives the information regarding the use of temporary employees, within the general information regarding the employment;

d) to ensure to the temporary employees the same rights that the employees employed with individual employment contract with the user enjoy, conferred by: law, by the internal regulation, by the collective labor contract applicable to the user, by any other specific regulations applicable to the user;

e) to provide and present accurate and real information on the use of temporary employees when the unions / employees' representatives request the situation of their own staff.

4. Conditions of authorization of the temporary work agent

The normative act that regulates the establishment and functioning of temporary work agents in Romania is the G.D. nr. 1256/2011

(Government of Romania, 2011) which provides the cumulative conditions for obtaining the authorization to operate as temporary work agents.

In order to obtain the authorization to operate as a temporary work agent, the legal person must meet the following conditions:

1. to be constituted as a legal person according to the legal provisions in force;

2. the main object of activity provided in the constitutive act, must be "Activities of contracting, on a temporary basis, the personnel according to the CAEN code 7820";

3. the budgetary obligations to be paid on time, according to the legislation in force, to the state budget, the state social insurance budget;

4. not to appear in the fiscal records with facts sanctioned by the financial and customs regulations, nor with those regarding the financial discipline;

5. not to have been sanctioned for contravention, in the last 24 months prior to the date of formulating the application for authorization, for violating the provisions of the labor, commercial and fiscal legislation; contraventions in respect of which there is an action before the courts will be taken into account only if a final and irrevocable court decision has been pronounced on them until the date of solving the application for authorization;

6. to constitute the financial guarantee by depositing an amount in a separate account opened with a Romanian bank, covering the equivalent of 25 gross minimum basic salaries per country, guaranteed in payment, to which are added the contributions due by the employer for risky conditions and work accidents.

"The sole purpose of this guarantee is its use in the payment by the temporary work agent of the salary rights, as well as of the other monetary rights negotiated at the conclusion of the temporary employment contract, as well as of the contributions due to the state budgets. According to the legislation, the guarantee will only be used if the temporary work agent does not have sufficient funds to pay the salary obligations and the related contributions when they become due. If the financial guarantee is not sufficient either, after a delay of 15 calendar days from the date on which the

salary obligations and those regarding the contributions to the state budgets became due and due, the obligations will be paid by the user based on the request, made in writing, by the temporary employee or the labor inspector. If the financial guarantee is used by the staff member for the above purpose, he will have the obligation to complete it so as to reach the initial amount within 5 days from the date of its reduction." (G. D. no. 1256/2011).

5. Date on the number of temporary work agents authorized in Romania during the period 2007-september 2021

At national level, through the care of the Ministry of Labor and Social Protection, the National Register of Temporary Employment Agents (NRTEA) is established, according to art.13 paragraph 1 of the G. D. no. 1256/2011.

The registration of temporary work agents authorized in NRTEA is done by the Ministry of Labor and Social Protection, within a maximum of 15 calendar days from the date of authorization. The model of this register is provided in annex no. 2 of the G. D.nr. 1256/2011 and includes the authorized temporary work agents and those to whom the authorization has been withdrawn or who have submitted the authorization. The register is published quarterly in the Romanian Official Monitor, Part IV, and is displayed on the website of the Ministry of Labor, Family and Social Protection.

According to the data provided by the Ministry of Labor (Minister of Labor, Family and Social Protection, 2021), between May 2007 and September 2021, a number of 1240 temporary employment agents were registered in our country. We notice an increase in the number of positions in the register if we take into account the fact that between May 2007 and February 2016, a number of 822 temporary employment agents were registered in Romania. As it appears from a simple calculation, in five years, the number of agents increased by 418. In 2021 alone, 72 temporary work agents were registered at national level, of which 6 are based in Suceava County.

Analyzing the Register published on the website of the Ministry of Labor and Social Protection, at the level of Suceava County during May 2007- September 2021, a number of 51 temporary work agents were set up, some of whom had their operating licenses expired. These figures show that

approximately 4.11% of the temporary work agencies authorized by the Ministry of Labor are from Suceava County. At national level, through the care of the Ministry of Labor and Social Protection, the National Register of Temporary Employment Agents (NRTEA) is established, according to art.13 paragraph 1 of the G.D. nr. 1256/2011.

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6. Conclusions

Employee leasing is one of the ways to achieve the flexibility of the labor market used more and more by units that, either temporarily register an increase in activity or do not want to manage themselves and resort to this type of temporary labor for a specific role or missions. Therefore, the user outsources all the activity of recruiting and hiring personnel, has no

obligation to keep the Register of Employees and, in general, no bureaucratic obligation in relation to temporary employees. They are exercised by the temporary work agent, except for the salary, if the work agent does not fulfill his obligation, he can be paid by the user.

Regarding the number of users registered in Romania since 2007, we consider that 1240 agents registered in the 14 years do not represent a significant number, if we take into account the fact that some of their authorizations had expired and they have not submitted for renewal.

As a result, we consider it appropriate to conduct information campaigns among entrepreneurs on the benefits of using this form of temporary work as a way to achieve flexicurity of the workforce, but also to achieve economic interests by users.

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