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Labour Code

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It must be specified that the only text which shall produce legal effects is
the text in the Romanian language.

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supplementing the Law No 53/2003 - Labour Code, published in the Official
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new numbering.

The Law No 53/2003 - Labour Code was published in the Official Gazette
of Romania, Part I, No 72 of 5 February 2003, and has also been amended
and supplemented by:

- the Law No 480/2003 amending the Article 50 e) of Law No 53/2003 -
Labour Code, published in the Official Gazette of Romania, Part I, No 814
of 18 November 2003;
- the Law No 541/2003 amending some dispositions of the Law No
53/2003 - Labour Code, published in the Official Gazette of Romania, Part I,
No 913 of 19 December 2003;
- the Government Emergency Ordinance No 65/2005 amending and
supplementing the Law No 53/2003 - Labour Code, published in the Official
Gazette of Romania, Part I, No 576 of 5 July 2005, approved with
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Official Gazette of Romania, Part I, No 1.147 of 19 December 2005;
- the Law No 241/2005 on preventing and fighting tax evasion, published
in the Official Gazette of Romania, Part I, No 672 of 27 July 2005, as
amended;
- the Government Emergency Ordinance No 55/2006 amending and
supplementing the Law No 53/2003 - Labour Code, published in the Official
Gazette of Romania, Part I, No 788 of 18 September 2006, approved with
supplements by the Law No 94/2007, published in the Official Gazette of
Romania, Part I, No 264 of 19 April 2007;

- the Law No 237/2007 amending the Article 269 (1) of Law No 53/2003 - Labour Code, published in the Official Gazette of Romania, Part I, No 497 of 25 July 2007;
- the Law No 202/2008 amending the Article 134 (1) of Law No 53/2003 - Labour Code, published in the Official Gazette of Romania, Part I, No 728 of 28 October 2008;
- the Government Emergency Ordinance No 148/2008 amending the Law No 53/2003 - Labour Code, published in the Official Gazette of Romania, Part I, No 765 of 13 November 2008, approved by the Law No 167/2009, published in the Official Gazette of Romania, Part I, No 321 of 14 May 2009;
- the Law No 331/2009 amending the Article 276 (1) e) of Law No 53/2003 - Labour Code, published in the Official Gazette of Romania, Part I, No 779 of 13 November 2009;
- the Law No 49/2010 regarding some measures on labour and social security field, published in the Official Gazette of Romania, Part I, No 195 of 29 March 2010.

TITLE I

General provisions

CHAPTER I

Scope

ART. 1

(1) The present code shall regulate the labour relationships field, the manner in which the control of the implementation of labour relationships field regulations takes place, as well as labour jurisdiction.

(2) The present code shall also apply to the labour relationships regulated by special laws, unless the latter do not contain derogatory specific provisions.

ART. 2

The provisions contained in the present code shall apply to:

- a) Romanian citizens who are employed based on an individual labour contract and who work in Romania;
- b) Romanian citizens employed on individual labour contract and who carry out their activity abroad, based on contracts concluded with a Romanian employer, except when the legislation of the state on the territory of which the individual labour contract is being performed on is more favourable;

- c) foreign or stateless citizens employed under an individual labour contract, who work for a Romanian employer on the territory of Romania;
- d) persons who have acquired the refugee status and are employed on an individual labour contract on the territory of Romania, according to the law;
- e) apprentices who work based on an on-the-job apprenticeship contract;
- f) employers who are natural or legal persons;
- g) trade unions or employers' organisations.

CHAPTER II

Fundamental principles

ART. 3

(1) The freedom to work shall be guaranteed by the Constitution. The right to work shall not be restricted.

(2) Any person shall be free to choose their work place and profession, trade, or activity to carry out.

(3) No one may be forced to work or not in a certain work place or profession, whatever that might be.

(4) Any labour contract concluded in violation of the provisions of paragraphs (1) - (3) shall be rightfully null.

ART. 4

(1) Forcible work shall be prohibited.

(2) The term forcible work designates any work or service imposed onto a person under threat or for which the person has not given his free consent.

(3) The following work or activity imposed by the public authorities shall not be seen as forcible work:

a) based on the law concerning the mandatory military service**);

b) when meeting the civic obligations set up by the law;

c) based on a court decree of conviction, which was final, according to the law;

d) in a force majeure, i.e. in the event of a war, catastrophe or risk of catastrophe such as: fires, floods, earthquakes, violent human or animal epidemics, animals or insects invasions, and, in general, under all circumstances jeopardising life or the normal living conditions of most of the population or of part of it.

***) See the Law No 395/2005 regarding the suspension of the mandatory military service during peacetime and the passing to the military service on a voluntary basis, published in the Official Gazette of Romania, Part I, No 1.155 of 20 December 2005, as amended.

ART. 5

(1) Within the work relationships, the principle of the equal treatment for all employees and employers shall apply.

(2) Any direct or indirect discrimination towards an employee, based on criteria such as sex, sexual orientation, genetic characteristics, age, national origin, race, colour of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, union membership or activity, shall be prohibited.

(3) A direct discrimination shall be represented by actions and facts of exclusion, differentiation, restriction, or preference, based on one or several of the criteria stipulated under paragraph (2), the purpose or effect of which is the failure to grant, the restriction or rejection of the recognition, use, or exercise of the rights stipulated in the labour legislation.

(4) An indirect discrimination shall be represented by actions and facts apparently based on criteria other than those stipulated under paragraph (2), but which cause the effects of a direct discrimination to take place.

ART. 6

(1) Any employee who performs work shall benefit from adequate work conditions for the activity carried out, social protection, labour safety and health, as well as the observance of his dignity and conscience, with no discrimination.

(2) All employees who perform work shall have their right to collective negotiations, their right to personal data protection, as well as their right to protection from unlawful dismissals, recognised.

(3) For equal work or work of equal value it shall be forbidden any discrimination for criteria such as sex with regard to all remuneration elements and conditions.

ART. 7

Employees and employers may associate freely for the defence of their rights and the promotion of their vocational, economic, and social interests.

ART. 8

(1) Labour relationships are based on the principle of consensus and good faith.

(2) To ensure a proper progression of labour relations the participants in labour relations shall inform and consult one another, in compliance with the law and the collective labour contracts.

ART. 9

The Romanian citizens are free to be employed in member countries of the European Union, as well as in any other state, provided they comply with the norms of international labour law and the bilateral treaties Romania has adhered to.

TITLE II

Individual labour contract

CHAPTER I

Conclusion of the individual labour contract

ART. 10

An individual labour contract is a contract based on which a natural person, called employee, undertakes to perform work for and under the authority of an employer, who is a natural or legal person, in return for a remuneration, called wages.

ART. 11

The clauses of the individual labour contract cannot contain contrary provisions or rights below the minimum level set up by laws or collective labour contracts.

ART. 12

(1) An individual labour contract shall be concluded for an indefinite period.

(2) As an exception, an individual labour contract may also be concluded for a definite period, under the express terms stipulated by the law.

ART. 13

(1) A natural person shall be allowed to work after having turned 16 years of age.

(2) A natural person may also conclude a labour contract, as an employee, after turning 15 years of age, based on his parents' or lawful guardians' consent, for activities in accordance with his physical development, aptitudes and knowledge, unless this places his health, development, and vocational formation under risk.

(3) Employment of persons under the age of 15 shall be prohibited.

(4) Employment of persons placed under court interdiction shall be prohibited.

(5) Employment in difficult, harmful, or dangerous work places shall only take place after the person has turned 18 years of age; such work places shall be set forth by Government decision.

ART. 14

(1) For the purposes of the present code, the term employer means a natural or legal person that may employ, according to the law, labour force based on an individual labour contract.

(2) A legal person can conclude individual labour contracts, as an employer, after having acquired that legal status.

(3) A natural person shall acquire the capacity to conclude individual labour contracts, as an employer, after having acquired full capacity of exercise.

ART. 15

It is prohibited, under the sanction of absolute nullity, to conclude an individual labour contract for the purpose of performing an illicit or immoral work or activity.

ART. 16

(1) The individual labour contract shall be concluded based on the parties' consent, in writing, in Romanian. The employer shall have the obligation to conclude the individual labour contract in written form. The written form shall be mandatory for the valid conclusion of the contract.

(2) Prior to the beginning of the activity, the individual labour contract shall be registered in the general book of employees, which shall be transmitted to the territorial labour inspectorate.

(3) The employer shall be under the obligation to give the employee a specimen of the individual labour contract prior to the beginning of the activity.

(4) The work performed based on an individual labour contract shall represent length of service.

ART. 17

(1) Prior to the conclusion or amendment of an individual labour contract, the employer shall be under the obligation to inform the person selected for employment, or the employee, as applicable, about the essential clauses he intends to include in the contract or to amend.

(2) The obligation to inform the person selected for employment or the employee shall be deemed to be met by the employer at the time of signing the individual labour contract or the rider, as applicable.

(3) The person selected for employment or, as applicable, the employee, shall be informed about the following elements at least:

- a) the identity of the parties;
- b) the work place or, in the absence of a stable work place, the provision that the employee may work at various places;
- c) the employer's head office or residence, as applicable;

- d) the position/occupation according to the specification in the Classification of occupations in Romania or to other regulatory acts, as well as the job description, with the specification of job attributions;
- e) the evaluation criteria of the employee professional activity applicable at the level of the employer;
- f) the risks typical of the job;
- g) the date from which the contract is to take effect;
- h) in the event of a labour contract for a definite period or a temporary labour contract, the duration of such contracts;
- i) the duration of the rest leave the employee is entitled to;
- j) the conditions under which the contracting parties can give their notice and the duration of the latter;
- k) the basic wages, other elements of the wage revenues, as well as the payment periodicity of the wages the employee is entitled to;
- l) the normal length of work, expressed in hours per day and hours per week;
- m) the mention of the collective labour contract regulating the work conditions for the employee;
- n) the length of the trial period.

(4) The elements in the information stipulated under paragraph (3) shall also be found in the contents of the individual labour contract.

(5) Any change in any of the elements stipulated under paragraph (3) during the progression of the individual labour contract shall require the conclusion of an additional deed to the contract, within 20 working days from the date of the amendment appearance, except for circumstances when such a change is expressly provided by law.

(6) Upon the negotiation of, conclusion of or amendment to an individual labour contract, any one of the parties may be assisted by third parties, according to their own choice, in compliance with the provisions of paragraph (7).

(7) As regards the information provided to the employee, prior to the conclusion of the individual labour contract, a confidentiality agreement between the parties may be reached.

ART. 18

(1) If the person selected for employment or the employee, as applicable, is to carry out his activity abroad, the employer shall be under the obligation to provide him, in due time, before his departure, with the information stipulated under Article 17 (3), as well as information regarding:

- a) the duration of the work period to be performed abroad;

- b) the currency in which his wages are to be paid, as well as how the payment is to be made;
- c) the payments in money and/or in kind related to the activity carried out abroad;
- d) the climate conditions;
- e) the main regulations in that country's labour legislation;
- f) the local customs the non-observance of which might put the employee's life, freedom, or personal safety at risk;
- g) repatriation conditions for the worker, as applicable.

(2) Information stipulated under paragraph (1) a), b) and c) shall have to be also listed in the content of the individual labour contract.

(3) Special laws regulating the typical work conditions abroad shall complete the provisions of paragraph (1).

ART. 19

If the employer does not comply with his obligation to inform person selected for employment or the employee stipulated under Articles 17 and 18, he shall be entitled to notify the competent court of law, within 30 days from the date of such obligation not being met, and ask for compensation corresponding to the prejudice caused to him as a result of the non-compliance by the employer with his obligation to inform the employee.

ART. 20

(1) Apart from the essential clauses stipulated under Article 17, the parties may also negotiate and include other specific clauses in the individual labour contract.

(2) The following are deemed as specific clauses, without limiting them to this listing:

- a) the clause on vocational formation;
- b) the non-competition clause;
- c) the mobility clause;
- d) the confidentiality clause.

ART. 21

(1) Upon the conclusion of the individual labour contract or throughout its execution, the parties may negotiate and include in the contract a non-competition clause under which the employee shall be under the obligation, after contract termination, not to perform, for his own interest or that of a third party, an activity which is competing with the one performed for his employer, in exchange for a monthly non-competition emolument which the employer undertakes to pay for the entire non-competition time period.

(2) The non-competition clause shall only take effect if the individual labour contract clearly stipulates the activities the employee is prohibited

from performing from the date of contract termination, the amount of the monthly non-competition emolument, the time period for which the non-competition clause causes its effect, the third parties on behalf of whom the performance of the activity is being prohibited, as well as the geographic area where the employee might be in actual competition with his former employer.

(3) The monthly non-competition emolument due to the employee shall not represent wages, shall be negotiated and shall be at least 50% of the average gross wages in the last 6 months prior to the date of termination of the individual labour contract was terminated or, if the duration of the individual labour contract was less than 6 months long, of the average gross monthly wages due to him for the contract period.

(4) The non-competition emolument shall represent an expense made by the employer, shall be deductible upon the calculation of the taxable profit, and the tax shall be charged from the beneficiary natural person, under the law.

ART. 22

(1) The non-competition clause may cause effects for a period not exceeding 2 years as from termination date of the individual labour contract.

(2) The provisions of paragraph (1) shall not be applicable when the termination of the individual labour contract has taken place rightfully, except for the cases provided in Article 56 (1) c), e), f), g) and i), or when it has been based on the employer's initiative for reasons which not pertain to the employee's person.

ART. 23

(1) The non-competition clause may not have as effect the employee being absolutely prohibited from exercising his profession or specialisation.

(2) Based on a notification by the employee or the territorial labour inspectorate, the competent court of law may diminish the effects of the non-competition clause.

ART. 24

In the event of the employee having violated, in ill will, the non-competition clause, he may be obliged to return the emolument and, as applicable, pay damages corresponding to the prejudice caused by him to the employer.

ART. 25

(1) Under the mobility clause, the parties in the individual labour contract shall stipulate that, considering the typical features of the work, the performance of the job duties by the employee shall not take place in a

stable work place. In this case, the employee shall benefit from additional pay in cash or in kind.

(2) The quantum of the additional pay in cash or the modalities of the additional pay in kind shall be specified in the individual labour contract.

ART. 26

(1) Under the confidentiality clause, the parties shall agree that, throughout the duration of the performance of the individual labour contract and after its termination, they will not transmit data or information they have become acquainted with during the contract progression, under the terms set out by the internal regulations, collective labour contracts or individual labour contracts.

(2) The failure by either of the parties to comply with this clause shall entail the obligation of the party at fault to pay damages.

ART. 27

(1) A person may only be employed based on a medical certificate, which finds that the person in question is fit to perform that work.

(2) The failure to comply with the provisions of paragraph (1) shall cause the individual labour contract to become null.

(3) The competence for and the procedure of issuing the medical certificate, as well as the sanctions applicable to the employer for employing or changing the place or kind of work without a medical certificate, shall be set forth by special laws.

(4) It is prohibited to require pregnancy tests on hiring a person.

(5) When employing a person in the fields of health, public catering, education, and other fields set forth by regulatory acts, typical medical tests may also be required.

ART. 28

A medical certificate shall also be mandatory under the following circumstances:

a) when restarting work after an interruption exceeding 6 months, for jobs with exposure to occupational harmful factors, and one year, in the other cases;

b) in the event of a temporary or permanent transfer to another job or activity, if work conditions change;

c) when beginning work, as far as employees hired under a temporary labour contract are concerned;

d) as far as apprentices, probationers, and school or college students, if they are to be trained per trades and professions, as well as when changing trade during the instruction period are concerned;

e) periodically, as far as persons are concerned who work under exposure to occupational harmful factors, according to the regulations of the Ministry of Health;

f) periodically, as far as persons are concerned who perform activities showing a risk of transmitting diseases and who work in the food and animal-breeding sectors, in drinking water supply units, in children's communities, or in medical institutions, according to the regulations of the Ministry of Health;

g) periodically, as far as persons who work in institutions without risk factors are concerned, by means of medical examinations differentiated per age, gender, and health condition, according to the regulations stipulated in the collective labour contracts.

ART. 29

(1) The individual labour contract shall be concluded after a preliminary check of the vocational and personal abilities of the person applying for the job.

(2) The ways in which the check stipulated under paragraph (1) is to take place shall be set up in the applicable collective labour contract, in the personnel - vocational or disciplinary - status, and in the internal regulations, unless the law stipulates otherwise.

(3) The purpose of the information requested, under any form, by the employer from the person applying for a job on the occasion of the preliminary check of abilities may only be for assessing his capacity to be in that position, as well as his vocational abilities.

(4) The employer may request information about the person applying for a job from his former employers, but only as regards the activities carried out and the length of that employment, and provided the person in question has been informed in advance.

ART. 30

(1) In public institutions and authorities, and other budgetary institutions, personnel employment may only take place based on a contest or examination, as the case may be.

(2) The vacant jobs appearing on the list of positions shall be put out for contest, depending on the needs of each institution stipulated under paragraph (1).

(3) If, for the contest organised for filling a vacancy, several candidates have not entered the contest, the employment shall be decided by an examination.

(4) The terms for organising a contest/examination and the manner in which it takes place shall be set by the regulations approved in a Government decision.

ART. 31

(1) In order to check the abilities of the employee, on the conclusion of the individual labour contract, a trial period of 90 calendar days at the most may be established for executive positions, and 120 calendar days at the most for management positions.

(2) The check of professional abilities when employing disabled persons shall be based only on a trial period of 30 calendar days at the most.

(3) Throughout the trial period or at the end of it, the individual labour contract may be terminated exclusively by a written notification, without notice, following the initiative of either party, without being necessary its motivation.

(4) During the trial period, the employee shall benefit from all the rights and have all the obligations stipulated in the labour legislation, the applicable collective labour contract, the internal regulations, as well as the individual labour contract.

(5) For graduates of higher educational institutions, the first 6 months after their debut in profession shall be considered probation period. Those professions in which the probation is regulated by special laws shall be exempted. At the end of the probation, the employer shall mandatorily issue a certificate, which shall be endorsed by the territorial labour inspectorate within the territorial jurisdiction of its headquarters.

(6) The modality of performing the probation provided in paragraph (5) shall be regulated by special law.

ART. 32

(1) During the progression of an individual labour contract, there may only be one trial period.

(2) As an exception, an employee may be subject to a new trial period if he starts up in a new position or profession with the same employer, or is to perform his activity in a work place under difficult, harmful, or dangerous conditions.

(3) The trial period shall represent length of service.

ART. 33

The period when successive trial hirings of more persons for the same job may be made shall be of maximum 12 months.

ART. 34

(1) Each employer shall be under the obligation to establish a general book of employees.

(2) The general book of employees shall be first registered with the competent public authority, under the law, which has jurisdiction over the employer's residence or head office, respectively, after which date it shall become an official document.

(3) The general book of employees shall be filled out and transmitted to the territorial labour inspectorate in the sequence of hiring and shall comprise the identification elements of all employees, their hiring dates, positions/occupations according to the specification in the Classification of occupations in Romania or to other regulatory acts, the type of individual labour contract, the wage, the supplementary allowance and their quantum, the period and the causes of suspension of the individual labour contract, the posting period and the date of individual labour contract termination.

(4) The general book of employees shall be kept at the employer's residence or head office, respectively, and it shall be placed at the disposal of the labour inspector or any other authority requesting it, under the law.

(5) At the request of an employee or a former employee, the employer shall be under the obligation to issue a document attesting for the activity carried out by him, duration of activity, wage, length of service, of trade and of specialisation.

(6) In the event of the employer's activity termination, the general book of the employees shall be deposited with the competent public authority, under the law, which has jurisdiction over the employer's residence or head office, respectively, as applicable.

(7) The methodology for preparing the general book of the employees, the records to be made, as well as any other elements related to making them shall be set fourth by a Government decision.

ART. 35

(1) Any employee shall be entitled to work at different employers or the same employer, based on individual labour contracts, with the adequate wage for each of them.

(2) Exceptions to the provisions of paragraph (1) shall be the cases when the law stipulates incompatibilities for cumulating positions.

ART. 36

Foreign and stateless citizens may be employed on an individual labour contract based on the work licence or the stay permit for employment purposes issued according to the law.

CHAPTER II

Execution of the individual labour contract

ART. 37

The rights and obligations concerning the work relationships between an employer and an employee shall be established according to the law, by negotiation, under the collective labour contracts and individual labour contracts.

ART. 38

Employees may not waive the rights acknowledged to them by the law. Any transaction the aim of which is to waive the rights recognised by the law to employees, or to limit such rights shall be null.

ART. 39

(1) An employee's main rights shall be as follows:

- a) the right to receive wages for the work performed;
- b) the right to a daily and weekly rest;
- c) the right to an annual rest leave;
- d) the right to equal chances and treatment;
- e) the right to dignity in his work;
- f) the right to labour safety and health;
- g) the right of access to vocational training;
- h) the right to information and consulting;
- i) the right to take part in the determination and improvement of the work conditions and environment;
- j) the right to protection as far as dismissal is concerned;
- k) the right to collective and individual negotiation;
- l) the right to participate in collective actions;
- m) the right to establish or join a trade union;
- n) other rights provided by law or by applicable collective labour contracts.

(2) The employee's main obligations shall be as follows:

- a) the obligation to accomplish his work rate or, as applicable, to meet his duties according to the job description;
- b) the obligation to observe work discipline;
- c) the obligation to observe the provisions of the internal regulations, of the applicable collective labour contract, as well as of the individual labour contract;
- d) the obligation of faithfulness to the employer in performing his job duties;
- e) the obligation to comply with the steps of labour safety and health in the unit;
- f) the obligation to observe the job secret;

g) other obligations provided by law or by applicable collective labour contracts.

ART. 40

(1) An employer's main rights shall be as follows:

- a) to establish the organisation and operation of the unit;
- b) to establish the attributions corresponding to each employee, under the law;
- c) to issue mandatory orders to the employee on condition they are lawful;
- d) to exercise the control over the way in which the job duties are carried out;
- e) to find whether departures from discipline have taken place and to apply adequate sanctions, under the law, the applicable collective labour contract, and the internal regulations;
- f) to establish the individual performance objectives, as well as the evaluation criteria for their achievement.

(2) The employer's main obligations shall be as follows:

- a) to inform the employees on the work conditions and elements regarding the progress of work relationships;
- b) to permanently ensure the technical and organisational conditions envisaged when the labour norms were drawn up, and the adequate work conditions;
- c) to grant the employees all the rights deriving from the law, the applicable collective labour contract, and the individual labour contracts;
- d) to inform the employees, on a periodical basis, about the unit's economic and financial position, except for sensitive or secret information, which, once disclosed, would be likely to prejudice the activity of the unit. The periodicity of communications shall be set forth by negotiation under the applicable collective labour contract;
- e) to consult the trade union or, as the case may be, the employees' representatives on the decisions likely to substantially affect their rights and interests;
- f) to pay all the contributions and taxes which fall upon him, as well as to withhold and transfer the contributions and taxes due by the employees, under the law;
- g) to establish the general book of employees and make the records stipulated by the law;
- h) to issue, on request, all the documents attesting to the petitioner's employee status;
- i) to make sure the employees' personal data are confidential.

CHAPTER III

Amendments to the individual labour contract

ART. 41

(1) The individual labour contract may only be amended based on the parties' consent.

(2) As an exception, a unilateral amendment to the individual labour contract shall only be possible in the cases and under the conditions stipulated by the present code.

(3) Amendments to the individual labour contract may refer to any one of the following elements:

- a) contract duration;
- b) work place;
- c) kind of work;
- d) work conditions;
- e) wages;
- f) work time and rest time.

ART. 42

(1) The work place may be modified unilaterally by the employer by delegating or temporarily transferring the employee to a work place other than the one stipulated in the individual labour contract.

(2) During the delegation or posting period, respectively, the employee shall preserve his position and all the other rights stipulated in the individual labour contract.

ART. 43

The delegation shall represent the temporary exercise by the employee, based on the employer's order, of works or assignments corresponding to the job duties, outside his work place.

ART. 44

(1) The delegation may be ordered for a period of 60 calendar days at the most within 12 months and may be extended only with the employee's consent, for successive periods of maximum 60 calendar days. The employee's refusal to extend the delegation may not constitute a motive for his disciplinary sanction.

(2) The delegated employee shall be entitled to the payment of transport and accommodation expenditures, as well as a delegation emolument, under the terms of the law or of the applicable collective labour contract.

ART. 45

The posting shall be the action ordering a temporary change in the work place, based on the employer's order, with another employer, for the purpose

of performing some works in the latter's interest. Exceptionally, a posting may also mean a change in the kind of work, but only based on the employee's written consent.

ART. 46

(1) A posting may be ordered for a period not to exceed one year.

(2) Exceptionally, the posting period may be extended for objective reasons requiring the employee's presence with the employer with whom the transfer was ordered, based on both parties' consent, every six months.

(3) An employee may only be free to decline the posting ordered by his employer exceptionally, and for good personal grounds.

(4) A posted employee shall be entitled to the payment of transport and accommodation expenditures, as well as a transfer emolument, under the terms of the law or the applicable collective labour contract.

ART. 47

(1) The employer with whom the transfer has been ordered shall grant the rights due to the transferred employee.

(2) For the transfer period, the employee shall enjoy the more favourable rights, either those granted by the employer having ordered the transfer, or those granted by the employer with whom the transfer was made.

(3) The employer ordering a transfer shall see that all steps are taken so that the employer to whom the transfer has been ordered fully complies and in due time with all the obligations towards the transferred employee.

(4) If the employer to whom the transfer has been ordered fully complies and in due time with all the obligations towards the transferred employee, such obligations shall be met by the employer having ordered the transfer.

(5) If there is disagreement between the two employers or if none of them meets his obligations under the provisions of paragraphs (1) and (2), the transferred employee shall be entitled to return to his work place with the employer having transferred him, to take action against any one of the two employers, and to ask for the forcible execution of the obligations not met.

ART. 48

An employer may temporarily change the place and kind of work, without the employee's consent, also in case of a force majeure, as a disciplinary sanction, or as a measure aimed at protecting the employee, in the cases and under the terms stipulated by the present code.

CHAPTER IV

Suspension of the individual labour contract

ART. 49

(1) The suspension of the individual labour contract may only take place rightfully, based on the parties' consent, or by unilateral action of one of either party.

(2) The suspension of the individual labour contract shall have as an effect the suspension of the performance of work by the employee and of the payment of the wages by the employer.

(3) Throughout the suspension, rights and obligations of the parties other than those stipulated under paragraph (2) may still be preserved provided they are stipulated by special laws, the applicable collective labour contract, individual labour contracts, or the internal regulations.

(4) In the event of the individual labour contract being suspended because of an action for which the employee is to blame, the latter shall not enjoy any of the rights deriving from his employee's position throughout the suspension period.

(5) Each time when during the contract suspension period a cause of rightful termination of the individual labour contract comes up, the cause of rightful termination shall prevail.

(6) In case of suspension of the individual labour contract, all the terms related to the conclusion, the amendment, the execution or the termination of the individual labour contract shall be suspended, except for the situations when the individual labour contract rightfully terminates.

ART. 50

An individual labour contract shall be rightfully suspended under the following circumstances:

- a) maternity leave;
- b) leave for temporary disability;
- c) quarantine;
- d) exercise of a position within an executive, legislative, or court authority, throughout the length of the mandate, unless the law stipulates otherwise;
- e) holding a paid management position in a trade union;
- f) force majeure;
- g) if the employee has been placed in custody, based on terms of the Criminal procedure code;
- h) from the end of the period for which were issued the approvals, the authorisations or the certifications necessary for performing the profession. If within 6 months the employee has not renewed the approvals, the authorisations or the certifications necessary for performing the profession, the individual labour contract shall be rightfully terminated;
- i) in other cases expressly stipulated by the law.

ART. 51

(1) The individual labour contract may be suspended on the employee's initiative, under the following instances:

- a) leave for raising a child up to the age of 2, or, in case of a disabled child, up to the age of 3;
- b) leave for looking after a sick child up to the age of 7 or, in case of a disabled child, for inter-current illnesses, up to the age of 18;
- c) paternal leave;
- d) vocational formation leave;
- e) exercise of elected positions within vocational bodies established at the central or local level, for the entire length of the mandate;
- f) participation in a strike.

(2) The individual labour contract may be suspended if an employee has unmotivated absences, under the terms stipulated by the applicable collective labour contract, the individual labour contract, as well as by the internal regulations.

ART. 52

(1) The individual labour contract may be suspended on the employer's initiative under the following instances:

- a) during a preliminary disciplinary inquiry, under the law;
- b) if the employer has filed a criminal complaint against his employee or the latter has been sent to trial for criminal actions incompatible with his position, until the court decree is final;
- c) in the event of a temporary discontinuance or reduction of activity, without the termination of the labour relationship, for economic, technological, structural or similar reasons;
- d) for the duration of the posting period;
- e) during the period of suspension by the competent authorities of approvals, authorisations or certifications necessary for performing the professions.

(2) In the cases provided in paragraph (1) a) and b), if the person in question should be proved innocent, that employee shall resume his previous activity and, based on the standards and principles of the civil contract liability, a compensation shall be paid to him equal to the wage and the other rights he was deprived of during the contract suspension.

(3) In case of the temporary reduction of activity, for economic, technological, structural or similar reasons, for periods that exceed 30 working days, the employer shall have the possibility to reduce the working programme from 5 days to 4 days per week, with the appropriate reduction of wage, until the remedy of the situation that caused the reduction of

programme, after prior consultation of the representative trade union at the level of unit or of the representatives of the employees, as applicable.

ART. 53

(1) For the duration of the temporary reduction and/or discontinuance of activity, the employees involved in the reduced or interrupted activity, which do not carry out activity anymore, shall benefit from an emolument, paid from the wage fund, which may not be less than 75% of the basic wage corresponding to that office, except for the situations provided in Article 52 (3).

(2) For the duration of the temporary reduction and/or discontinuance provided in paragraph (1), the employees shall be at the disposal of the employer, who can order the activity to be resumed at any time.

ART. 54

An individual labour contract may be suspended, based on the parties' consent, in case of unpaid leaves for studies or for personal interests.

CHAPTER V

Termination of the individual labour contract

ART. 55

The individual labour contract can be terminated as follows:

- a) rightfully;
- b) based on the parties' consent, on the date agreed upon by them;
- c) as a result of one of the parties' unilateral will, in the cases and under the limitation terms stipulated by the law.

SECTION 1

Rightful termination of the individual labour contract

ART. 56

The existing individual labour contract shall be rightfully terminated:

- a) on the death date of employee or of employer who is a natural person, as well as in case of dissolution of employer who is a legal person, from the date when the employer ceased to exist according to the law;
- b) on the date when the judgement declaring the death or the placing under interdiction of the employee or of the employer who is a natural person becomes irrevocable;
- c) on the date of cumulative meeting of the standard age conditions and the minimum contribution period for retirement; on the date of communicating the retirement decision for disability pension, partial in-

advance pension, in-advance pension, old age pension with the reduction of the standard age for retirement;

d) as a result of the absolute nullity of individual labour contract having been found, from the date the nullity was found, based on the parties' consent, or on a final court decree;

e) as a result of the admittance of the petition for reinstating a person dismissed on unlawful or wrong grounds to the position occupied by the employee, from the date the reinstating court decree is final;

f) as a result of a criminal sentence to be served in prison, from the date of such court decree being final;

g) from the date of withdrawal, by the competent authorities or bodies, of the approvals, authorisations, or certifications necessary for exercising one's profession;

h) as a result of one's being prohibited from exercising a profession or a position, as a safety measure or complementary punishment, from the date the court decree ordering the interdiction was final;

i) on the expiry of the deadline of the individual labour contract concluded for a definite period;

j) withdrawal of the parents' or legal representatives' consent, as far as employees whose ages range between 15 and 16 years are concerned.

(2) For the situations provided in paragraph (1) c) - j), the establishment of the case of rightful termination of the individual labour contract shall be made within 5 working days from its intervention, in writing, by employer's decision, and shall be communicated to the persons found in that situations within 5 working days.

ART. 57

(1) The failure to comply with any of the necessary lawful conditions for the valid conclusion of the individual labour contract shall entail its nullity.

(2) The finding of an individual labour contract nullity shall cause effects for the future.

(3) The nullity of an individual labour contract may be cancelled by the subsequent compliance with the terms imposed by the law.

(4) If a clause should be affected by nullity, since it establishes rights or obligations for the employees that contravene to some imperative lawful standards or applicable collective labour contracts, it shall be rightfully replaced by the applicable lawful or conventional provisions, and the employee shall be entitled to compensations.

(5) A person who has performed work based on a null individual labour contract shall be entitled to its pay, depending on how he accomplished his job duties.

(6) Such nullity shall be found and its effects shall be established, under the law, based on the parties' agreement.

(7) If the parties should not reach an agreement, the nullity shall be ordered by a court of law.

SECTION 2

Dismissal

ART. 58

(1) The dismissal shall represent the termination of the individual labour contract on the employer's initiative.

(2) The dismissal may be ordered for reasons pertaining to the employee's person or for reasons that do not pertain to the employee's person.

ART. 59

It shall be prohibited the employees dismissal:

a) based on criteria such as gender, sexual orientation, genetic characteristics, age, national origin, race, colour of the skin, ethnic origin, religion, political option, social origin, disability, family status or responsibility, trade union membership or activity;

b) for the exercise, under the terms of the law, of their right to strike and trade union rights.

ART. 60

(1) Employee dismissal may not be ordered:

a) for the duration of one's temporary labour disability, as established in a medical certificate according to the law;

b) for the duration of the suspension of the activity as a result of establishing the quarantine;

c) for the duration an employed woman is pregnant, if the employer became acquainted with this fact before the issuance of such dismissal decision;

d) for the duration of one's maternity leave;

e) for the duration of one's leave for raising a child up to the age of 2, or, in case of a disabled child, up to the age of 3;

f) for the duration of one's leave for looking after a sick child up aged up 7 or, in case of a disabled child, for inter-current diseases, until he turns 18 years of age;

g) for the duration of the exercise of an elected position in a trade union body, except when the dismissal is ordered for a serious disciplinary departure or for repeated disciplinary departures by that employee;

h) for the duration one's rest leave.

(2) The provisions of paragraph (1) shall not apply in case of dismissal for reasons due to the employer's judicial reorganisation, bankruptcy or dissolution, under the law.

SECTION 3

Dismissal for reasons related to the employee's person

ART. 61

The employer may order the dismissal for reasons pertaining to an employee's person under the following circumstances:

a) if that employee has perpetrated a serious departure or repeated departures from the work discipline regulations or those set by the individual labour contract, the applicable collective labour contract, or the internal regulations, as a disciplinary sanction;

b) if the employee has been placed under police custody for a period exceeding 30 days, under the terms of the Criminal procedure code;

c) if, following a decision of the competent medical examination authorities, physical and/or mental incapacity of that employee has been found, which prevents the latter from accomplishing the duties related to his current work place;

d) if the employee should not be professionally fit for his current position.

ART. 62

(1) If the dismissal takes place for one of the reasons stipulated under Article 61 b) - d), the employer shall be under the obligation to issue the dismissal decision within 30 calendar days from the date of dismissal cause being found.

(2) If the dismissal should be ordered for the reason provided in Article 61 a), the employer may only issue the dismissal decision in compliance with the provisions of Article 247 - 252.

(3) Such decision shall be issued in writing and, under sanction of absolute nullity, it shall be motivated de facto and de jure and comprise details concerning the delay within which it may be appealed and the court where the appeal may be filed.

ART. 63

(1) A dismissal for a serious departure or repeated departures from the work discipline regulations may only be ordered after the employer has completed a preliminary disciplinary inquiry, and within the delays set by the present code.

(2) The employee dismissal for the reason provided in Article 61 d) may only be ordered after his preliminary evaluation, according to the evaluation

procedure established by the applicable collective labour contract or, in its absence, by the internal regulations.

ART. 64

(1) If a dismissal should be ordered for the reasons stipulated under Article 61 c) and d), as well as when an individual labour contract has rightfully ceased under Article 56 (1) e), the employer shall be under the obligation to suggest to the employee other vacant positions in the unit, consistent with his professional training or, as the case may be, his work capability assessed by a labour medicine doctor.

(2) If the employer has no vacant positions according to paragraph (1), he shall be under the obligation to ask the territorial employment agency for support in the reassigning the employee, according to his professional training and/or, as applicable, to his work capability assessed by a labour medicine doctor.

(3) Such employee shall have at his disposal a delay of 3 workdays from the employer's communication according to the provisions of paragraph (1) to expressly state his consent concerning the new job offered.

(4) If that employee does not state his consent within the delay stipulated under paragraph (3), as well as after the case has been notified to the territorial employment agency according to paragraph (2), the employer may order the employee's dismissal.

(5) In the event of a dismissal for the reason stipulated under Article 61 c), the employee shall benefit from a compensation, under the terms set forth in the applicable collective labour contract or in the individual labour contract, as applicable.

SECTION 4

Dismissal for reasons not pertaining to the employee's person

ART. 65

(1) The dismissal for reasons not pertaining to the employee's person shall represent the termination of the individual labour contract, caused by the suppression of that employee's position, for one or several reasons not related to the employee.

(2) The suppression of a position must be effective and have an actual serious cause.

ART. 66

The dismissal for reasons not pertaining to the employee's person may be individual or collective.

ART. 67

The employees dismissed for reasons which are not pertaining to their persons shall benefit from active steps for unemployment control and may benefit from compensations under the terms stipulated by the law and the applicable collective labour contract.

SECTION 5

Collective dismissal. Information, consultation of employees and the procedure of collective dismissals

ART. 68

(1) By collective dismissal one understands the dismissal, within 30 calendar days, ordered for one or more reasons not related to the employee, of a number of:

- a) at least 10 employees, if the employer who is dismissing them has more than 20 employees and less than 100 employees;
- b) at least 10% of the employees, if the employer who is dismissing them has at least 100 employees but less than 300 employees;
- c) at least 30 employees, if the employer who is dismissing them has at least 300 employees.

(2) Upon the determination of the actual number of collectively dismissed employees, according to paragraph (1), there shall be taken into account the employees with individual labour contracts terminated at the employer's initiative, for one or several reasons, not related to the employee, provided that there are at least 5 dismissals.

ART. 69

(1) In case the employee intends to make collective dismissals, it shall be obliged to initiate, in due time and with a view to reaching an agreement, under the terms of the law, consultations with the trade union or, as applicable, the employees' representatives, referring at least to:

- a) the methods and means for avoiding collective dismissals or reducing the number of employees to be dismissed;
- b) mitigating the consequences of dismissals by resorting to social measures envisaging, inter alia, support for the professional re-qualification or reconversion of the dismissed employees.

(2) During the period of consultations, according to paragraph (1), in order to allow the trade union or the employees' representatives to formulate proposals in due time, the employer shall be bound to supply them with all relevant information and to notify in writing the following:

- a) the total number and categories of employees;
- b) the reasons that determine the forecast dismissal;

- c) the number and categories of employees that will be affected by the dismissal;
- d) criteria had in view, according to the law and/or collective labour contracts, in determining the priority order for dismissal;
- e) the measures had in view for limiting the number of dismissals;
- f) the measures for mitigating the consequences of dismissals and the compensations to be granted to the dismissed employees, according to the legal provisions and/or to the applicable collective labour contract;
- g) the date on which or the period during which the dismissals are bound take place;
- h) the time limit within which the trade union or, as the case may be, the representatives of the employees can make proposals to avoid or reduce the number of dismissed employees.

(3) The criteria provided in paragraph (2) d) shall be applied in order to categorize the employees after the evaluation of the performance objectives achievement.

(4) The obligations provided in paragraph (1) and (2) shall be maintained irrespective of whether the decision that determined the collective dismissals is made by the employer or by an undertaking that controls the employer.

(5) In case the decision that determines the collective dismissals is made by an undertaking that has control over the employer, the employer may not take advantage, in his failure to comply with the obligations provided in paragraph (1) and (2), of the fact that the undertaking did not supply the necessary information.

ART. 70

The employer shall be under the obligation to send a copy of the notification mentioned in Article 69 (2) to the territorial labour inspectorate and the territorial employment agency on the same date when the notification was sent to the trade union or, as the case may be, to the employees' representatives.

ART. 71

(1) The trade union or, as applicable, the employees' representatives may propose to the employer steps for avoiding the dismissals or diminishing the number of employees dismissed, within 10 calendar days of the date of receipt of the notification.

(2) The employer shall be under the obligation to reply, in writing and stating good reasons, to the proposals forwarded under the provisions of paragraph (1), within 5 calendar days as of their receipt.

ART. 72

(1) In case that, after the consultations with the trade union or the employees' representatives, according to the provisions of Article 69 and 71, the employer shall decide to apply the measure of collective dismissal, it shall be obliged to notify in writing the territorial labour inspectorate and the territorial employment agency, at least 30 calendar days before the date when the dismissal decisions were issued.

(2) The notification provided in paragraph (1) must include all relevant information with regard to the intention of collective dismissal, provided in Article 69 (2), as well as the results of consultations with the trade union or the employees' representative, provided in Article 69 (1) and 71, particularly the reasons of the dismissals, the total number of employees, the number of employees affected by the dismissal and the date or the period when such dismissals begin to take place.

(3) The employer shall be under the obligation to send a copy of the notification mentioned in paragraph (1) to the trade union or, as the case may be, to the employees' representatives on the same date when the notification was sent to the territorial labour inspectorate and the territorial employment agency.

(4) The trade union or the employees' representatives may forward their possible viewpoints to the territorial labour inspectorate.

(5) Upon the reasoned request of either party, the territorial labour inspectorate, with the opinion of the territorial employment agency, may order the reduction of the period provided in paragraph (1), notwithstanding the individual rights with regard to the notice period.

(6) The territorial labour inspectorate shall be under the obligation to inform within 3 working days the employer and the trade union or the employees' representatives, as applicable, on the reduction or the extension of the period provided in paragraph (1), as well as on the reasons underlying this decision.

ART. 73

(1) Within the period provided in Article 72 (1), the territorial employment agency must seek solutions for the problems raised by the forecast collective dismissals and to communicate them in due time to the employer and the trade union or, as the case may be, the employees' representatives.

(2) Upon the motivated request of either party, the territorial labour inspectorate, after consultation with the territorial employment agency, may order the postponement of the time of issuing of the dismissal decisions by 10 calendar days, in case the issues related to the collective dismissal had in view may not be solved by the date established in the collective dismissal

notification provided in Article 72 (1) as being the date of issuing of dismissal decisions.

(3) The territorial labour inspectorate shall be obliged to inform in writing the employer and the trade union or the employee's representatives, as applicable, on the postponement of the time of issue of the dismissal decisions, as well as on the reasons underlying this decision, before the initial period provided in Article 72 (1) expires.

ART. 74

(1) Within 45 calendar days from his dismissal, the dismissed employee by collective dismissal shall have the right to be re-employed with priority on the position re-established in the same activity, without examination, contest or trial period.

(2) If during the period provided in paragraph (1) the same activities are resumed, the employer shall send to the employees that have been dismissed from the positions of which activity is resumed in the same conditions of professional competence a written communication, by which they are informed on resuming the activity.

(3) The employees shall have at their disposal a term of maximum 5 calendar days from the date of the employer's communication, provided in paragraph (2), in order to give their written consent regarding the job offered to them.

(4) If the employees who are entitled to be re-employed according to paragraph (2) do not give their written consent within the term provided in paragraph (3) or if they refuse the job offered, the employer may hire new people for the vacant jobs.

(5) The provisions of Articles 68 - 73 shall not be applied to the employees from public institutions and public authorities.

(6) The provisions of Articles 68 - 73 shall not be applied in case of individual labour contracts concluded for a definite period, except for the cases when these dismissals take place prior to the expiry date of these contracts.

SECTION 6

Right to notice

ART. 75

(1) The persons dismissed based on Article 61 c) and d), and Articles 65 and 66 shall benefit from the right to a notice which may not be less than 20 working days.

(2) An exception to the provisions of paragraph (1) shall be represented by the persons dismissed based on Article 61 d), who are on a trial period.

(3) If, during the notice period, the individual labour contract should be suspended, the notice delay shall be suspended accordingly, except for the case stipulated in Article 51 (2).

ART. 76

(1) The dismissal decision shall be communicated to the employee in writing and shall contain by all means:

- a) the reasons for the dismissal;
- b) the notice duration;
- c) the criteria for establishing the priority order, according to Article 69 (2) d), only as far as collective dismissals are concerned;
- d) the list of all available positions in the unit and the delay within which the employees are to choose a vacant position, under the terms of Article 64.

ART. 77

The dismissal decision shall cause effects from the date of it being notified to the employee.

SECTION 7

Control of and sanctions for unlawful dismissals

ART. 78

The dismissal ordered in non-compliance with the procedure stipulated by the law is struck by absolute nullity.

ART. 79

In the event of a labour conflict, an employer may not resort, before a court of law, to other de facto or de jure reasons than the ones stated in the dismissal decision.

ART. 80

(1) If the dismissal has not been based on good grounds or has been unlawful, the court shall order its cancellation and force the employer to pay an compensation equal to the indexed, increased and updated wages and the other rights the employee would have otherwise benefited from.

(2) At the employee's request, the court having ordered the cancellation of the dismissal shall restore the parties to the status existing before the issuance of the dismissal document.

(3) In case the employee does not request the reinstatement in the situation previous to the issuance of the dismissal document, the individual labour contract shall be rightfully terminated at the date when the judgment remains final and irrevocable.

SECTION 8 Resignation

ART. 81

(1) By resignation one understands the unilateral act of will of the employee who, by means of a written notification, informs his employer about the termination of the individual labour contract, after a notice delay has elapsed.

(2) The employer shall be under the obligation to register the employee's resignation. The employer's refusal to register the resignation shall give the employee the right to prove it by any means of evidence.

(3) An employee shall be entitled not to motivate his resignation.

(4) The term of notice shall be the one agreed upon by the parties in the individual labour contract or, as applicable, the one provided in the applicable collective labour contracts, and may not exceed 20 working days for employees in executive positions, respectively 45 working days for employees in management positions.

(5) Throughout the notice duration, the individual labour contract shall continue to take full effects.

(6) If, during the notice period, the individual labour contract should be suspended, the notice delay shall be suspended accordingly.

(7) An individual labour contract shall cease on the date of expiry of the notice delay or on the date the employer waives the delay entirely or partially.

(8) An employee may resign without a notice if his employer has not met his obligations according to the individual labour contract.

CHAPTER VI

Individual labour contract for a definite period

ART. 82

(1) As an exception to the rule stipulated under Article 12 (1), the employers may be permitted to employ, for the purpose and under the terms of the present code, personnel based on individual labour contracts for a definite period.

(2) An individual labour contract for a definite period may only be concluded in a written form, expressly stating the duration it is being concluded for.

(3) The individual labour contract for a definite period may be extended, under the conditions provided in Article 83, even after the expiry of the original term, based on the parties' written consent, for the period of carrying out a project, a programme or a work.

(4) No more than 3 successive individual labour contracts for a definite period may be concluded between the same parties.

(5) The individual labour contracts for a definite period concluded within 3 months from the termination of a labour contract for a definite period shall be considered successive contracts and may not have a duration exceeding 12 months each.

ART. 83

An individual labour contract may only be concluded for a definite period in the following instances:

- a) replacement of an employee in the event his labour contract is suspended, except when that employee participates in a strike;
- b) temporary increase and/or change of the employer's activity structure;
- c) progression of some seasonal activities;
- d) if it is concluded based on some lawful provisions issued with a view to temporarily favouring certain categories of unemployed persons;
- e) hiring a person who, within 5 years from the hiring date, meets the terms of retirement for age limit;
- f) occupying an eligible position within the trade, employers' or non-government organisations, for the mandate period;
- g) hiring the retired persons who, under the law, may cumulate the pension and the wages;
- h) in other cases expressly provided by special laws or for the carrying out of some works, projects or programmes.

ART. 84

(1) The individual labour contract for a definite period may not be concluded for a period exceeding 36 months.

(2) If an individual labour contract for a definite period is concluded with a view to replacing an employee whose individual labour contract has been suspended, the contract duration shall expire when the reasons having caused the suspension of the individual labour contract of the full employee have ceased to exist.

ART. 85

An employee hired based on an individual labour contract for a definite period may be subjected to a trial period, which shall not exceed:

- a) 5 workdays, for a duration of the individual labour contract not to exceed 3 months;

- b) 15 workdays, for a duration of the individual labour contract ranging between 3 and 6 months;
- c) 30 workdays, for a duration of the individual labour contract exceeding 6 months;
- d) 45 workdays, in the case of employees holding management positions, for a duration of the individual labour contract exceeding 6 months.

ART. 86

(1) The employers shall be under the obligation to inform the employees hired based on individual labour contracts for a definite period about the vacant positions or those to become vacant, which correspond to their vocational training, and shall grant them access to such positions under equal terms as the employees hired based on individual labour contracts for an indefinite period. Such information shall be made public in an announcement posted at the employer's head office.

(2) A copy of the notice provided in paragraph (1) shall be sent at once to the trade union or to the employees' representatives.

ART. 87

(1) As regards the employment and labour conditions, the employees with individual labour contract for a definite period shall not be treated less favourable than the comparable permanent employees, with no other reason than the duration of the individual labour contract, except for the cases when the different treatment is justified by objective reasons.

(2) For the purpose of paragraph (1), the comparable permanent employees is the employee with an individual labour contract concluded for an indefinite period and that is carrying out the same activity or a similar activity, in the same unit, having in view the professional qualification/aptitudes.

(3) When there is no comparable employee with an individual labour contract for an indefinite period in the same unit, the provisions of the applicable collective labour contract or, in its absence, the legal regulations in field shall be taken into account.

CHAPTER VII

Work through a temporary labour agent

ART. 88

(1) The work through a temporary labour agent is the work performed by a temporary employee who has concluded a temporary labour contract with a temporary labour agent and who is placed at the user's disposal in order to work temporarily under the supervision and management of the latter.

(2) The temporary employee is the person who has concluded a temporary labour contract with a temporary labour agent in order to be placed at an user's disposal to work temporarily under the supervision and management of the latter.

(3) The temporary labour agent is the legal person, authorised by the Ministry of Labour, Family and Social Protection, which concludes temporary labour contracts with temporary employees, in order to place them at the user's disposal, to work for the period established by the availability contract under the user's supervision and management. The conditions for the temporary labour agent's functioning, as well as the authorising procedure shall be established by Government decision.

(4) The user is the natural or legal person for whom or under whose supervision and management a temporary employee placed at disposal by the temporary labour agent works temporarily.

(5) The temporary work mission means that period in which the temporary employee is placed at the user's disposal to work temporarily under its supervision and management, in order to carry out a precise and temporary duty.

ART. 89

A user may call upon temporary labour agents for carrying out a precise and temporary duty, except for the case provided in Article 93.

ART. 90

(1) The temporary work mission shall be established for a period which may not exceed 24 months.

(2) The duration of the temporary work mission may be extended for successive periods which, added to the initial duration of the mission, may not exceed 36 months.

(3) The conditions under which the duration of a temporary work mission may be extended shall be provided in the temporary labour contract or shall make the object of an additional deed to that contract.

ART. 91

(1) The temporary labour agent shall place at the user's disposal an employee hired under a temporary labour contract, on the basis of an availability contract concluded in writing.

(2) The availability contract shall comprise:

- a) the mission duration;
- b) the typical characteristics of the position, especially the necessary skills, the place of completing the mission and the work schedule;
- c) the actual work conditions;

d) the individual protective and work outfit the temporary employee must use;

e) any other services and facilities for the benefit of the temporary employee;

f) the value of the commission the temporary labour agent benefits from, as well as the wage the employee is entitled to.

g) the conditions under which the user may refuse a temporary employee placed at disposal by a temporary labour agent.

(3) Any clause prohibiting the user from hiring the temporary employee after the mission has been completed is null.

ART. 92

(1) Temporary employees shall have access to all the services and facilities provided by the user, under the same terms as the latter's other employees.

(2) The user shall provide the temporary employee with individual protective and work outfit except when, based on the availability contract, this is the responsibility of the temporary labour agent.

ART. 93

The user shall not be allowed to benefit from the services of a temporary employee, if his goal is to replace thus one of his employees whose labour contract has been suspended as a result of his participating in a strike.

ART. 94

(1) The temporary labour contract is an individual labour contract which shall be concluded in writing between the temporary labour agent and the temporary employee, for the duration of a mission.

(2) The temporary labour contract shall state, apart from the elements provided in Article 17 and Article 18 (1), the conditions under which the mission is going to take place, the mission duration, the user identity and head office, as well as the quantum and the modalities for paying the temporary employee.

ART. 95

(1) A temporary labour contract may also be concluded for several missions, provided the term stipulated under Article 90 (2) is observed.

(2) The temporary labour agent may conclude with the temporary employee a labour contract for indefinite period, in which situation in the period between two missions the temporary employee shall be at the disposal of the temporary labour agent.

(3) For each new mission, the parties shall conclude a temporary labour contract, stating all the elements provided in Article 94 (2).

(4) The temporary labour contract shall terminate at the end of the mission it has been concluded for or if the user gives up to his services before the end of the mission, under the conditions of the availability contract.

ART. 96

(1) Throughout the duration of the mission, the temporary employee shall benefit from the wages paid by the temporary labour agent.

(2) The wage received by the temporary employee for each mission shall be established by direct negotiation with the temporary labour agent and shall not be lower than the national minimum gross wage guaranteed for payment.

(3) The temporary labour agent shall be the one who retains and transfers all contributions and taxes due by the temporary employee to state budgets and pays for him all the contributions due according to the law.

(4) If, within 15 calendar days from the date the obligations concerning the payment of the wages and those concerning contributions and taxes have become due and exigible, and the temporary labour agent does not comply with them, they shall be paid by the user, based on the request by the temporary employee.

(5) The user who has paid the amounts due according to paragraph (4) shall subrogate, for the amounts paid, the rights of the temporary employee against the temporary labour agent.

ART. 97

The temporary labour contract may set up a trial period for mission completion, the duration of which shall not exceed:

a) two working days, if the temporary labour contract is concluded for a period shorter than or equal to a month;

b) 5 working days, if the temporary labour contract is concluded for a period between one and 3 months;

c) 15 working days, if the temporary labour contract is concluded for a period between 3 and 6 months;

d) 20 working days, if the temporary labour contract is concluded for a period exceeding 6 months;

e) 30 working days in case of the employees in management positions, for a duration of the temporary labour contract exceeding 6 months.

ART. 98

(1) Throughout the mission, the user shall be responsible for providing the work conditions to the temporary employee, in compliance with the legislation in force.

(2) The user shall notify at once the temporary labour agent about any labour agent or occupational disease he has learnt about and the victim of

which has been a temporary employee placed at his disposal by the temporary labour agent.

ART. 99

(1) At the end of the mission, the temporary employee can conclude an individual labour contract with the user.

(2) If the user should hire, after a mission, a temporary employee, the duration of the mission shall be taken into consideration when calculating his wages, as well as other rights stipulated by the labour legislation.

ART. 100

The temporary labour agent who dismisses the temporary employee before the delay stipulated in the temporary labour contract, for reasons other than disciplinary ones, shall have the obligation to comply with the provisions of the law on the termination of the individual labour contract for reasons which not related to the employee's person.

ART. 101

Except for the contrary special dispositions provided in this chapter, the legal dispositions, the provisions of the internal regulations, as well as those of the collective labour contracts applicable to employees hired under individual labour contracts for indefinite period with the user shall equally apply to temporary employees for the duration of their mission with him.

ART. 102

The temporary labour agents shall not charge any tax to the temporary employees in exchange of the measures for their recruitment by the user or for the conclusion of a temporary labour contract.

CHAPTER VIII

Part-time individual labour contract

ART. 103

The employee with a rate fraction is the employee with a number of normal working hours, calculated weekly or as a monthly fraction, that is lower to the number of normal working hours of a comparable employee with full load.

ART. 104

(1) An employer may hire employees with a rate fraction by means of individual labour contracts for an indefinite period or for a definite period, called part-time individual labour contracts.

(2) A part-time individual labour contract shall only be concluded in writing.

(3) A comparable employee is a full-time employee of the same unit with the same individual labour contract, who performs the same activity or one similar to that of the employee hired on a part-time individual labour contract, also having in view other grounds, such as length of service and professional qualification/aptitudes.

(4) When there is no comparable employee in the same unit, the provisions of the applicable collective labour contract or, in its absence, the legal regulations in field shall be taken into account.

ART. 105

(1) A part-time individual labour contract shall comprise, apart from the elements stipulated under Article 17 (3), the following:

- a) the work period and distribution of work schedule;
- b) the terms under which the work schedule may be modified;
- c) the interdiction to work extra hours, except for a force majeure or other urgent works meant to prevent accidents or to remove their consequences.

(2) If, in a part-time individual labour contract, the elements stipulated under paragraph (1) are not stated, the contract shall be deemed to be full-time.

ART. 106

(1) An employee hired on a part-time labour contract shall enjoy all the rights of full-time employees, under the terms stipulated by the law and the applicable collective labour contracts.

(2) The wages shall be granted proportional to the time actually worked, in relation to the rights established for a normal work schedule.

ART. 107

(1) As far as possible, the employer shall take into consideration the employees' requests to be transferred either from a full-time position to a part-time position, or from a part-time position to a full-time position, or to have an increased work schedule, should this opportunity occur.

(2) The employer shall notify his employees in due time regarding the availability of part-time or full-time positions, in order to facilitate transfers from full-time to part-time positions and vice versa. This notification shall be done by means of an announcement posted up at the employer's head office.

(3) A copy of the notice provided in paragraph (2) shall be sent at once to the trade union or the employees' representative.

(4) As far as possible, the employer shall provide access to jobs with fractions at all levels.

CHAPTER IX

Home-based work

ART. 108

(1) Those employees who carry out, at their home, the assignments typical of their positions shall be deemed home-based employees.

(2) With a view to their job duties, the home-based employees shall set up their own work schedule.

(3) The employer shall be entitled to check the activity of home-based employee, under the terms set forth by the individual labour contract.

ART. 109

An individual labour contract for home-based work shall only be concluded in a written form and shall comprise, apart from the elements stipulated under Article 17 (3), the following:

- a) the express mention that the employee shall work at home;
- b) the schedule during which the employer shall be entitled to check his employee's activity, and the actual manner of such a control;
- c) the employer's obligation to ensure transport, to and from the employee's residence, as applicable, of the raw materials and materials, which such employee uses in his activity, as well as the finished products made by him.

ART. 110

(1) A home-based employee shall enjoy all the rights stipulated by the law and the collective labour contracts applicable to employees whose work place is at the employer's office.

(2) By the collective labour contracts and/or by individual labour contracts may also be established other typical conditions for home-based work, in accordance with the legislation in force.

TITLE III

Work time and rest time

CHAPTER I

Work time

SECTION 1

Duration of work time

ART. 111

The work time is any period during which the employee performs works, is at the disposal of the employer and carries out his tasks and attributions,

according to the provisions of the individual labour contract, the applicable collective labour contract and/or the legislation in force.

ART. 112

(1) For full-time employees, the normal length of the work time shall be of 8 hours per day and 40 hours per week.

(2) As far as young people who do not exceed 18 years are concerned, the duration of the work time shall be of 6 hours per day and 30 hours per week.

ART. 113

(1) The distribution of the work time throughout the week shall, as a rule, be equal, with 8 hours per day for 5 days, and with two rest days.

(2) Depending on the typical features of the unit or the work performed, one can also choose an unequal distribution of the work time, provided the normal duration of the work time is of 40 hours per week.

ART. 114

(1) The maximum lawful length of the work time shall not exceed 48 hours per week, including overtime hours.

(2) As an exception, the length of the work time, including the overtime hours, may be extended over 48 hours per week, provided the average number of work hours, as calculated for a reference period of 4 calendar months, does not exceed 48 hours per week.

(3) For certain activities or professions established by the applicable collective labour contract, may be negotiated, by that collective labour contract, reference periods more than 4 months, but not exceeding 6 months.

(4) Subject to the observance of regulations concerning health and safety protection in work of the employees, for objective, technical or regarding the work organisation reasons, the collective labour contracts may provide derogations from the reference period duration established in paragraph (3), but for reference periods that in no case shall exceed 12 months.

(5) When establishing the reference periods provided in paragraphs (2) - (4), the length of the annual rest leave and the situations when the individual labour contract is being suspended shall not be taken into account.

(6) The provisions of paragraphs (1) - (4) shall not apply to young people who have not turned 18 years of age.

ART. 115

(1) For certain sectors of activity, units or professions, one may establish, following collective or individual negotiations, or by means of specific laws, the daily duration of the work time lower or higher than 8 hours.

(2) A daily duration of the work time of 12 hours shall be followed by a rest period of 24 hours.

ART. 116

(1) The actual manner for establishing an uneven work time within the 40-hour work week, as well as during the compressed work week, shall be negotiated by means of the collective labour contract at the level of the employer, or, in its absence, it shall be stipulated in the internal regulations.

(2) An uneven work schedule shall operate only if expressly stated in the individual labour contract.

ART. 117

The work schedule and its distribution per days shall be notified to the employees and posted at the employer's head office.

ART. 118

(1) The employer may establish individualised work schedules, with the consent or at the request of the employee in question.

(2) Individualised work schedules shall suppose a flexible organisation of the work time.

(3) The daily duration of the work time shall be divided into two periods: a fixed period during which all the employees are at their work places, and a variable, mobile period in which the employee selects his arrival and departure times, provided the daily work time is observed.

(4) An individualised work schedule may only operate in compliance with the provisions of Articles 112 and 114.

ART. 119

The employer shall be under the obligation to keep records of the number of work hours performed by each employee and shall submit such records to the labour inspection control whenever required.

SECTION 2

Extra work

ART. 120

(1) The work performed outside the normal duration of the weekly work time, as stipulated under Article 112, shall be considered extra work.

(2) The extra work may not be performed without the employee's consent, except for a force majeure or urgent works meant to prevent accidents or to remove the consequences of an accident.

ART. 121

(1) At the employer's request, the employees may perform extra work provided the provisions of Articles 114 or 115, as applicable, are observed.

(2) Performance of extra work above the limit set according to the provisions of Articles 114 or 115, as applicable, shall be prohibited, except

for a cases of force majeure or for other urgent works meant to prevent accidents or to remove the consequences of an accident.

ART. 122

(1) Overtime work shall be compensated with paid hours off during the next 60 calendar days after the work has been performed.

(2) Under these conditions, the employee shall benefit from the adequate wage for the hours performed beyond the normal work schedule.

(3) In the periods of reduction of the activity, the employer shall have the possibility to grant paid days off from which the overtime hours that are going to be carry out during the following 12 months may be compensated.

ART. 123

(1) If the compensation with paid time off is not possible within the delay stipulated under Article 122 (1) during the next month, the extra work shall be paid to the employee by adding a benefit corresponding to its duration to the wages.

(2) The benefit for extra work, granted under the terms stipulated by paragraph (1), shall be established by negotiation, within the collective labour contract or, as applicable, the individual labour contract, and may not be lower than 75% of the basic wages.

ART. 124

Young people under 18 years of age may not perform extra work.

SECTION 3

Night work

ART. 125

(1) The work performed between 10 p.m. and 6 a.m. shall be deemed night work.

(2) The night worker is, as applicable:

a) the employee that performs night work at least 3 hours of his daily working time;

b) the employee that performs night work in proportion of at least 30% of his monthly working time.

(3) The normal duration of work time, for the night worker, shall not exceed an average 8 hours a day, calculated for a reference period of maximum 3 calendar months, in compliance with the legal provisions with regard to the weekly rest.

(4) The normal duration of work time for the night workers whose activity is carried out under special or outstanding working conditions shall not exceed 8 hours during any 24-hour period unless the extension of this

duration is provided in the applicable collective labour contract and only in the situation in which such a provision does not infringe some express provisions established in the collective labour contract concluded at an upper level.

(5) In the situation provided in paragraph (4), the employer shall be under the obligation to grant equivalent compensatory rest periods or cash compensation of the night hours worked over 8 hours.

(6) An employer who frequently uses night work shall notify this to the territorial labour inspectorate.

ART. 126

The night workers shall benefit either:

a) from a work schedule an hour shorter than the normal duration of the work day, for the days when they perform at least 3 hours of night work, without this leading to a decrease in the basic wage;

b) from a benefit of 25% from the basic wage for the work performed during the night, if the time worked in this way represents at least 3 night hours from the normal working time.

ART. 127

(1) The employees who are to perform night work under the terms of Article 125 (2) shall be subject to a free medical examination before starting activity and afterwards, periodically.

(2) The terms of the medical examination and its periodicity shall be set forth by the regulations approved by joint order of the minister of labour, family and social protection and of the minister of health.

(3) The employees who perform night work and have health problems recognized as being connected with this kind of work shall be transferred to a day work they are fit for.

ART. 128

(1) Young people who have not turned 18 years of age shall not perform night work.

(2) Pregnant, lately confined, or nursing women may not be obliged to perform night work.

SECTION 4

Work rate

ART. 129

A work rate shall express the amount of work needed for operations or works being performed by an adequately skilled person, who works at a normal pace, under the conditions of determined operating and work

processes. The work rate shall comprise the productive time, the time for interruptions caused by the progression of the technological process, and the time for lawful breaks during the work schedule.

ART. 130

The work rate shall be expressed, depending on the characteristics of the production process or other rated activities, as time rates, production rates, personnel rates, attribution spheres, or other forms corresponding to the features of each activity.

ART. 131

Work rating shall apply to all employee categories.

ART. 132

Work rates shall be drawn up by the employer, under the regulations in force, or, if such regulations do not exist, the work rates shall be drawn up by the employer after consultation with the representative trade union or, according to the case, with the employees' representatives.

CHAPTER II

Periodical rests

ART. 133

The rest break is any period that is not working time.

SECTION 1

Lunch break and daily rest

ART. 134

(1) If the daily duration of the work time exceeds 6 hours, employees shall be entitled to a lunch break and other breaks, under the terms set forth the applicable collective labour contract or the internal regulations.

(2) Young people under 18 years of age shall benefit from a lunch break of at least 30 minutes, if the daily duration of the work time exceeds 4 and a half hours.

(3) Unless otherwise stipulated in the applicable collective labour contract and the internal regulations, the breaks shall not be included in the normal duration of the work time.

ART. 135

(1) Employees shall be entitled, in between two workdays, to a rest, which may not be less than 12 consecutive hours.

(2) As an exception, as far as work in shifts is concerned, this rest cannot be less than 8 hours between shifts.

ART. 136

(1) Work by shifts is any manner of organising the working schedule, according to which the employees succeed one another in the same job position, according to a certain schedule, including a schedule by turns, and that may be continuous or discontinuous, and that involves for the employee the need to carry out the activity in different hourly intervals in ratio to a daily or weekly period, established in the individual labour contract.

(2) Employee by shifts is any employee with a working schedule that is a part of the working schedule by shifts.

SECTION 2

Weekly rest

ART. 137

(1) The weekly rest shall be granted over two consecutive days, usually on Saturday and Sunday.

(2) If the rest on Saturday and Sunday would cause prejudice to the public interest or the normal progression of the activity, the weekly rest may also be granted on other days set forth in the applicable collective labour contract or the internal regulations.

(3) Under the circumstance stipulated under paragraph (2), the employees shall benefit from a wage benefit set in the collective labour contract or, as applicable, the individual labour contract.

(4) Under exceptional circumstances the days of weekly rest shall be granted on a cumulative basis, after a period of continuous activity which may not exceed 14 calendar days, based on the authorisation of the territorial labour inspectorate and the consent of the trade union or, as applicable, of the employees representatives.

(5) The employees whose weekly rest is granted under the terms of paragraph (4) shall be entitled to twice the compensations due under Article 123 (2).

ART. 138

(1) In the event of urgent works, the immediate performance of which is necessary for the organisation of rescue measures for persons or goods of the employer, for preventing imminent accidents or for removing the effects that such accidents may have had on the unit's materials, equipment or buildings, the weekly rest can be suspended for the necessary personnel to perform such works.

(2) The employees whose weekly rest has been suspended under the terms of paragraph (1) shall be entitled to twice the compensation due under Article 123 (2).

SECTION 3

Lawful holidays

ART. 139

(1) The lawful holidays on which no work is performed shall be:

- the 1st and 2nd of January;
- the first and second days of Easter;
- the 1st of May;
- the first and second day of Pentecost;
- the Assumption of the Virgin;
- the 1st of December;
- the first and second days of Christmas;
- 2 days for each of the 3 annual religious holidays, declared as such by the legal religions other than Christian ones, for persons belonging to such religions.

(2) The days off shall be granted by the employer.

ART. 140

A Government decision shall set up the adequate work schedules for sanitary and public-catering institutions, with a view to ensuring sanitary care and people's supply with strictly necessary food products, respectively; the implementation of such schedules shall be mandatory.

ART. 141

The provisions of Article 139 shall not apply at work places where activity may not be interrupted due to the characteristics of the production process or typical features of activity.

ART. 142

(1) The employees who work in the institutions stipulated under Article 140, as well as at the work places stipulated under Article 141 shall be compensated with adequate time off during the next 30 days.

(2) If, for justified reasons, no days off are granted, the employees shall benefit, for the work performed on lawful holidays, from a benefit added to their basic wages which may not be less than 100% of the basic wages corresponding to the work performed during the normal work schedule.

ART. 143

The applicable collective labour contract may also set forth other days off.

CHAPTER III

Leaves

SECTION 1

Annual rest leave and other employee leaves

ART. 144

(1) The right to annual paid rest leave shall be guaranteed to all employees.

(2) The right to annual rest leave shall not make the object of any transfers, waivers, or limitations.

ART. 145

(1) The minimum duration of the annual rest leave is of 20 workdays.

(2) The actual duration of the annual rest leave shall be established in the individual labour contract, under the law and the applicable collective contracts, and granted in proportion to the activity performed in a calendar year.

(3) The holidays on which no work is performed, as well as the paid days off set forth in the applicable collective labour contract shall not be included in the duration of the annual rest leave.

ART. 146

(1) The rest leave shall be taken each year.

(2) As an exception to the provisions of paragraph (1), taking one's rest leave the next year shall only be permitted in the cases expressly stipulated by the law or those stipulated in the applicable collective labour contract.

(3) An employer shall be under the obligation to grant leaves, by the end of the next year, to all employees who, during a calendar year, have not taken all the rest leaves they were entitled to.

(4) The cash compensation of the rest leave not taken shall only be permitted in the event of the termination of the individual labour contract.

ART. 147

(1) The employees who work under difficult, dangerous, or harmful conditions, blind persons, other disabled people, and young people less than 18 years old shall benefit from an additional rest leave of at least 3 workdays.

(2) The number of working days related to the supplementary rest leave for the categories of employees provided in paragraph (1) shall be established by the applicable collective labour contract and it shall be of at least 3 working days.

ART. 148

(1) Taking one's rest leave shall be based on a collective or individual scheduling drawn up by the employer after having consulted the trade union, or, as applicable, the employees' representatives, as far as collective scheduling is concerned, or the employee, as far as individual scheduling is concerned. The scheduling shall be done by the end of the calendar year for the coming year.

(2) The collective scheduling may establish leave periods, which shall not be less than 3 months per categories of personnel or positions.

(3) The individual scheduling may establish the date of the leave commencement or, as applicable, the period during which the employee is entitled to the leave, which period shall not exceed 3 months.

(4) Within the leave periods set forth according to paragraphs (2) and (3), an employee may apply for the leave at least 60 days before its commencement.

(5) If the leave scheduling is divided into fractions, the employer shall be under the obligation to do the scheduling so that each employee benefits, in one calendar year, from at least 10 working days of uninterrupted leave.

ART. 149

The employee shall be under the obligation to take, in kind, the rest leave during the period he was scheduled for, except for the situations expressly stipulated by the law, or when the leave may not be taken for objective reasons.

ART. 150

(1) For the rest leave period, an employee shall benefit from a leave emolument, which may not be lower than his basic wage, the emoluments and permanent additions due for that period, as stipulated in the individual labour contract.

(2) The rest leave emolument shall represent the daily average of the wages stipulated under paragraph (1) in the last 3 months prior to the one when the leave is taken, multiplied by the number of leave days.

(3) The rest leave emolument shall be paid by the employer at least 5 workdays before the date of leave commencement.

ART. 151

(1) The rest leave may be discontinued, at the employee's request, for objective reasons.

(2) The employer may call back the employee from his rest leave in the event of a force majeure or for urgent interests making the employee's presence necessary at his work place. In this case, the employer shall cover all expenses incurred by the employee and his family because of coming

back to the work place, as well as all possible prejudice caused to him as a result of the interruption of the rest leave.

ART. 152

(1) If special family events should occur, employees shall be entitled to paid days off, which shall not be included in the duration of the rest leave.

(2) The special family events and the number of paid days off shall be set forth by the law, the applicable collective labour contract, or the internal regulations.

ART. 153

(1) Employees shall be entitled to unpaid leaves for solving certain personal problems.

(2) The applicable collective labour contract or the internal regulations shall set forth the duration of an unpaid leave.

SECTION 2

Vocational training leaves

ART. 154

(1) The employees shall be entitled to benefit, on request, from vocational training leaves.

(2) Vocational training leaves may be either paid or unpaid.

ART. 155

(1) The unpaid vocational training leaves shall be granted at the employee's request, for the duration of the vocational training the employee is attending on his initiative.

(2) The employer may reject the employee's request only if the employee's absence would cause serious prejudice to carrying on its activity.

ART. 156

(1) The application for vocational training unpaid leave shall be submitted to the employer at least one month before its commencement and it shall state the date of commencement of the vocational training term and its duration, as well as the denomination of the vocational qualification institution.

(2) The vocational training unpaid leave may also be taken in fractions in the course of one calendar year, with a view to taking the examinations for graduating some education institutions or taking examinations for passing in the next year of higher education institutions, in compliance with the terms stipulated under paragraph (1).

ART. 157

(1) If the employer has not met his obligation to ensure, at his own expense, an employee's participation in vocational training classes under the law, that employee shall be entitled to a vocational training leave, paid by the employer, of up to 10 workdays or up to 80 hours.

(2) In the instance stipulated under paragraph (1), the leave emolument shall be established according to Article 150.

(3) The period during which an employee benefits from the paid leave stipulated under paragraph (1) shall be mutually agreed upon with the employer. The application for vocational training paid leave shall be submitted to the employer under the terms stipulated under Article 156 (1).

ART. 158

The duration of the vocational training leave shall not be deducted from the duration of the annual rest leave, and shall be deemed similar to an actual work period as regards the rights due to the employee other than the wages.

TITLE IV

Wage plan

CHAPTER I

General provisions

ART. 159

(1) The wages shall represent the equivalent of the work performed by an employee based on the individual labour contract.

(2) For the work performed based on the individual labour contract, each employee shall be entitled to wages expressed in cash.

(3) When establishing and granting the wages, all discrimination shall be prohibited for criteria such as gender, sexual orientation, genetic characteristics, age, national origin, race, colour of skin, ethnic origin, religion, political options, social origin, disability, family situation or responsibility, trade union membership or activity.

ART. 160

The wages shall comprise the basic wages, allowances, benefits, as well as other additions.

ART. 161

The employers shall pay the wages before any other payment obligations.

ART. 162

(1) The minimum wage levels shall be established by the applicable collective labour contracts.

(2) The individual wage shall be established by individual negotiations between employer and employee.

(3) The wage plan for the personnel of the public authorities and the public institutions financed entirely or mainly by the state budget, the state social insurance budget, the local budgets and the special funds budgets shall be established by law, after consultation with the representative trade union organisations.

ART. 163

(1) The wages shall be confidential, and the employer shall have the obligation to take the necessary steps to keep confidentiality.

(2) With a view to promoting the employees' interests and defending their rights, the confidentiality of wages may not be opposed to trade unions or, as the case may be, to the employees' representatives, in strict connection with their interests and in their direct relation with the employer.

CHAPTER II

National minimum gross basic wages guaranteed for payment

ART. 164

(1) The national minimum gross basic wages guaranteed for payment, corresponding to the normal work schedule, shall be established by Government decision after consultation with the trade unions and employers' organisations. If the normal work schedule is, under the law, less than 8 hours per day, the hourly gross minimum basic wages shall be calculated by relating the gross national minimum basic wages to the monthly average number of hours according to the lawful work schedule approved.

(2) An employer may not negotiate or establish basic under the individual labour contract below the national hourly gross minimum basic wages.

(3) The employer shall be under the obligation to guarantee the payment of monthly gross wages at least equal to the national minimum gross basic wages. These provisions shall also apply if the employee is present for work, according to the schedule, but he cannot carry out his activity due to reasons beyond his control, except for strikes.

(4) The employer shall see that the national minimum gross basic wages guaranteed for payment are notified to the employees.

ART. 165

For employees to whom the employer, in compliance with the collective or individual labour contract, provides food, housing or other facilities, the amount of money due for the work performed shall not be lower than the gross national minimum wages stipulated by the law.

CHAPTER III

Payment of wages

ART. 166

(1) The wages shall be paid in cash at least once a month, on the date stipulated in the individual labour contract, in the applicable collective labour contract, or in the internal regulations, as applicable.

(2) The payment of the wage may be made by transfer to a bank account.

(3) The payment in kind of part of the wages, according to the terms stipulated under Article 165, shall only be possible if expressly stipulated in the applicable collective labour contract or the individual labour contract.

(4) An unjustified delay in the payment of the wages or the failure to pay them may cause the employer to be obliged to pay damages to cover the prejudice caused to the employee.

ART. 167

(1) The wages shall be paid directly to the holder or his agent.

(2) In the event of the employee's death, the wages due up to the date of his death shall be paid, in sequence, to the surviving spouse, the deceased employee's major children, or parents. If none of these categories of persons exist, the wages shall be paid to other heirs, in compliance with the common law.

ART. 168

(1) The payment of the wages shall be proved by the employee signing the pay lists, as well as by any other documentary evidence proving the payment has been made to the entitled employee.

(2) The pay lists, as well as the other documentary evidence, shall be kept and archived by the employer under the same conditions and for the same delays as the accounting documents, under the law.

ART. 169

(1) No amount may be withheld from the wages, except for the cases and under the circumstances stipulated by the law.

(2) No amounts may be withheld as damages caused to the employer unless the employee's debt is due, liquid and exigible, and has been found as such by a court decree which is final and irrevocable.

(3) If several creditors of the employee exist, the following order shall be observed:

- a) child support, according to the Family Law;
- b) contributions and taxes due to the state;
- c) damages caused to public property by means of illicit actions;

d) covering other debts.

(4) The cumulated amounts withheld from the wages may not exceed half of the net wages every month.

ART. 170

The acceptance without reservation of part of the wages or the signature of the pay documents under such circumstances shall not be construed as the employee waiving the to the entire wages due to him, under the provisions of the law or of the contract.

ART. 171

(1) The right to take action as regards the wages, as well as regarding the damages resulting from the failure to comply, entirely or partially, with the obligations concerning wage payment, shall be prescribed within 3 years from the date on which such rights became due.

(2) The prescription delay stipulated under paragraph (1) shall be discontinued if the debtor should admits the wage rights or deriving from the payment of the wages.

CHAPTER IV

Guarantee fund for the payment of wage debts

ART. 172

The establishment and use of the guarantee fund for the payment of wage debts shall be regulated by a special law.

CHAPTER V

Protection of employees' rights in the event of a transfer of the company, of the unit, or of parts thereof

ART. 173

(1) The employees shall benefit from the protection of their rights if a transfer of the company, unit, or parts of it takes place to another employer, under the law.

(2) The transferor's rights and obligations, which derive from a labour contract or relationship existing on the date of the transfer, shall be fully transferred to the transferee.

(3) The transfer of the company, unit, or of parts of it shall not constitute the grounds for the individual or collective dismissal of the employees by the transferor or the transferee.

ART. 174

Prior to the transfer, the transferer and the transferee shall be under the obligation inform and consult the trade union or, as applicable, the employees' representatives as regards the legal, economic, and social consequences deriving from the transfer of the property right on the employees.

TITLE V

Labour health and safety

CHAPTER I

General rules

ART. 175

(1) The employer shall be under the obligation to ensure the employees' safety and health in all work related aspects.

(2) If an employer resorts to outside persons or services, this shall not exonerate him from liability in this domain.

(3) The employees' obligations as regards labour safety and health may not affect the employer's liability.

(4) The steps concerning labour safety and health shall, by no means, cause financial obligations to the employees.

ART. 176

(1) The provisions of the present title shall be completed by the provisions of the special law, the applicable collective labour contracts, as well as by the labour safety standards and regulations.

(2) The labour safety standards and regulations may set forth:

- a) general labour safety measures for preventing labour accidents and occupational diseases, applicable to all employers;
- b) labour safety steps typical of certain professions or activities;
- c) typical safety steps applicable to certain categories of personnel;
- d) provisions concerning the organisation and operation of special bodies ensuring labour safety and health.

ART. 177

(1) Within his own responsibilities, an employer shall take all the necessary steps with a view to protecting the safety and health of employees, including the activities of occupational risks prevention, intraining and training, as well as implementing the organisation of labour safety and the necessary means for this.

(2) In adopting and implementing the steps stipulated under paragraph (1), the following general prevention principles shall be taken into consideration:

- a) avoiding risks;
- b) assessing risks which cannot be avoided;
- c) source control of risks;
- d) adjusting work to each person, especially as regards the design of work places and the choice of work and production equipment and methods, with special emphasis on the reduction of the monotonous work and repetitive work, as well as the reduction of their effects on health;
- e) taking into consideration technical evolution;
- f) replacing dangerous items with safe or less dangerous ones;
- g) planning the prevention;
- h) adopting collective safety steps having priority over the individual safety steps;
- i) informing the employees about the adequate instructions.

ART. 178

(1) The employer shall be responsible for the organisation of the labour health and safety activity.

(2) The internal regulations shall stipulate in a mandatory manner rules for labour safety and health.

(3) In drawing up the labour safety and health measures, the employer shall consult the trade union or, as the case may be, the employees' representatives, as well as the labour safety and health committee.

ART. 179

The employer shall provide all the employees with insurances for risks of labour accidents and occupational diseases, under the law.

ART. 180

(1) The employer shall organise the instruction of his employees in the filed of labour safety and health.

(2) The instruction shall be periodical, using specific means mutually agreed upon by the employer together with the labour safety and health committee and the trade union or, as the case may be, the employees' representatives.

(3) The instruction stipulated under paragraph (2) shall be mandatory in the case of new employees, of those who change jobs or the kind of work, and those who resume activity after an interruption exceeding 6 months. In all these cases, the instruction shall be carried out before the actual commencement of work.

(4) The instruction shall also be mandatory if amendments to the applicable legislation occur.

ART. 181

(1) Work places shall be organised so as to guarantee employees' safety and health.

(2) The employer shall organise a permanent control of the condition of materials, equipment, and substances used in the work process, with a view to protecting employees' health and safety.

(3) The employer shall be liable for ensuring the conditions for providing the first aid in the event of labour accidents, for creating fire prevention conditions, as well as for evacuating the employees under special conditions and in the event of an imminent danger.

ART. 182

(1) To ensure labour safety and health, the institution authorised by the law may order the limitation or prohibition of manufacturing, selling, importing, or using under any title substances and preparations which are hazardous to the employees.

(2) Based on the approval by the labour medicine doctor, the labour inspector may oblige the employer to request the competent bodies to perform, against a charge, tests and examinations of products, substances, or preparations which are deemed to be hazardous, in order to know their composition and the effects they could have on human body.

CHAPTER II

Labour safety and health committee

ART. 183

(1) At the level of each employer, a labour safety and health committee shall be established for the purpose of making sure the employees are involved in the drawing up and implementation of labour safety decisions.

(2) The labour safety and health committee shall be established amongst the legal persons in the public, private, and co-operative sector, including those having foreign capital, which carry out activities on the Romanian territory.

ART. 184

(1) The labour safety and health committee shall be established by employers who are legal persons and have at least 50 employees.

(2) If the work conditions are difficult, harmful or dangerous, a labour inspector may request such committees to be established even for employers who have less than 50 employees.

(3) If the activity takes place in units spread out in the territory, several labour safety and health committees may be established. Their number shall be decided in the applicable collective labour contract.

(4) The labour safety and health committee shall also coordinate the labour safety and health measures as far as activities which take place on a temporary basis are concerned, for a duration exceeding 3 months.

(5) If the establishment of a labour safety and health committee does not prove to be necessary, the person in charge of labour safety appointed by the employer shall carry out its typical duties of such committee.

ART. 185

The composition, specific responsibilities, and functioning of the labour safety and health committee shall be regulated by Government decision.

CHAPTER III

Employees' protection by means of medical services

ART. 186

The employers shall ensure the employees' access to the medical service of labour medicine.

ART. 187

(1) The medical service of labour medicine may be an autonomous service organised by the employer or a service provided by an employers' organisation.

(2) The length of the work performed by a labour medicine doctor shall be calculated depending on the number of employees of that employer, according to the law.

ART. 188

(1) The labour medicine doctor shall be an employee, certified in his profession under the law, and a holder of a labour contract concluded with an employer or an employers' organisation.

(2) The labour medicine doctor shall be independent in exercising his profession.

ART. 189

(1) The main duties of the labour medicine doctor shall consist of:

- a) preventing work accidents and occupational diseases;
- b) actually monitoring labour hygiene and health standards;
- c) performing employees' medical check both when they commence employment and throughout the execution of the individual labour contracts.

(2) With a view to accomplishing his duties, a labour medicine doctor may suggest the employer to change the work place or the kind of work for certain employees, considering their health condition.

(3) The labour medicine doctor shall be a rightful member of the labour safety and health committee.

ART. 190

(1) The labour medicine doctor shall set up, each year, an activity programme aimed at improving the work environment as far as labour health is concerned for each employer.

(2) The elements of such a programme shall be typical of each employer and subject to the approval by the labour safety and health committee.

ART. 191

A special law shall regulate the typical powers, how the activity is organised, control bodies, as well as the typical professional status of labour medicine doctors.

TITLE VI

Vocational training

CHAPTER I

General provisions

ART. 192

(1) The main objectives of the employees' vocational training shall be as follows:

- a) employee adjustment to the requirements his position or work place;
- b) employees obtaining vocational skills;
- c) updating the knowledge and skills typical of one's position and work place and improving one's vocational training for the basic occupation;
- d) vocational re-conversion caused by social-economic restructuring;
- e) acquiring advanced knowledge, modern methods and procedures, needed for carrying out one's vocational activities;
- f) preventing the risk of unemployment;
- g) one's promotion advancement and development of a vocational career.

(2) The vocational training and knowledge assessment shall take place based on occupational standards.

ART. 193

The employees' vocational training shall be achieved through the following forms:

- a) participation in courses organised by the employer or by the providers of vocational training services in Romania or abroad;
- b) terms of vocational adjustment to the requirements of one's position or work place;
- c) terms of practice and specialisation in Romania and abroad;
- d) on-the-job apprenticeship;

- e) individualised training;
- f) other training forms agreed upon between the employer and the employee.

ART. 194

(1) The employers shall be under the obligation to ensure the participation of all employees in vocational training programmes, as follows:

- a) at least once every 2 years, if they have at least 21 employees;
- b) at least once every 3 years, if they have less than 21 employees.

(2) The expenses incurred for employee participation in the vocational training programmes, ensured under the terms of paragraph (1), shall be covered by the employers.

ART. 195

(1) An employer who is a legal person with more than 20 employees shall prepare and implement, on an annual basis, vocational training plans, after consulting the trade union or, as the case may be, the employees' representatives.

(2) A vocational training plan drawn up under the provisions of paragraph (1) shall become an appendix of the collective labour contract concluded at unit level.

(3) The employees shall have the right to be informed about the contents of the vocational training plan.

ART. 196

(1) An employee's participation in the vocational training may take place on the employer's or the employee's initiative.

(2) The actual manner of vocational training, the parties' rights and obligations, the length of the vocational training, as well as any other aspects related to vocational training, including employee's obligations towards the employer having covered the expenses for such vocational training, shall be set forth based on the parties' agreement and shall make the object of additional deeds to the individual labour contracts.

ART. 197

(1) If the participation in vocational training classes or terms is initiated by the employer, all the expenses occasioned by this participation shall be covered by this.

(2) During the period of participation in vocational training classes or terms, according to paragraph (1), the employee shall benefit, for the entire duration of the vocational training, of all the held wage rights.

(3) During the period of participation in vocational training classes or terms, according to paragraph (1), the employee shall benefit from the length

of service in that job, this period being considered a period of contribution to the state social insurance system.

ART. 198

(1) The employees who have benefited from a vocational training classes or terms, under the conditions of Article 197 (1), may not have the initiative to terminate the individual labour contract for a period established by additional deed.

(2) The duration of the employee's obligation to work for the employer who covered the expenses incurred for his vocational training, as well as any other aspects related to the employee's obligations, subsequent to the vocational training, shall be set forth in an additional deed to the individual labour contract.

(3) The failure by the employee to comply with the provision stipulated under paragraph (1) shall cause him to cover all the expenses incurred for his vocational training, in proportion to the period not worked from the period set forth according under the additional deed to the individual labour contract.

(4) The obligation stipulated under paragraph (3) shall also apply to employees who were dismissed during the period established in the additional deed, for disciplinary reasons, or whose individual labour contract has ceased due to them being taken in police custody for a period exceeding 60 days, under a court decree which was final, for an offence related to their job, as well as if a criminal court has placed on him a temporary or permanent interdiction to exercise his profession.

ART. 199

(1) If an employee should have has the initiative of participating in an off-the-job vocational training programme, the employer shall review the employee's request in consultation with the trade union or, as applicable, the employees' representatives.

(2) The employer shall make a decision on the request filed by the employee under paragraph (1) within 15 days from the receipt of the request. At the same time, the employer shall decide on the terms under which he will allow the employee to participate in the vocational training form, including whether he will cover the cost of this entirely or partially.

ART. 200

The employees who have concluded an additional deed to the individual labour contract in connection with vocational training may receive, apart from the wages corresponding to their job, other advantages in kind for vocational training.

CHAPTER II

Special contracts for vocational training organised by the employer

ART. 201

The special contracts for vocational training shall be comprised of the vocational qualification contract and the vocational adjustment contract.

ART. 202

(1) A vocational qualification contract is a contract based on which an employee undertakes to attend the training classes organised by his employer with a view to him acquiring professional skills.

(2) Vocational qualification contracts can be concluded by employees over the age of 16 years, who have not acquired a qualification or have acquired a qualification which does not allow them to keep their job with that employer.

(3) A vocational qualification contract shall be concluded for a period of 6 months to 2 years.

ART. 203

(1) Vocational qualification contracts may only be concluded by employers authorised by the Ministry of Labour, Family and Social Protection and by the Ministry of Education, Research, Youth and Sports to that effect.

(2) The authorising procedure, as well as the certification of the vocational qualification shall be stipulated in a special law.

ART. 204

(1) A vocational adjustment contract shall be concluded in view of debutante employees' adjustment to a new position, a new work place, or a new team.

(2) A vocational adjustment contract shall be concluded at the same time as the individual labour contract or, as applicable, when the employee commences work in the new position, the new work place, or the new team, under the law.

ART. 205

(1) A vocational adjustment contract shall be a contract concluded for a definite period, which may not exceed one year.

(2) Upon expiry of the vocational adjustment contract delay, the employee may be subject to an evaluation with a view to assessing how he can cope with the new position, new work place, or new team where he is to work.

ART. 206

(1) A trainer shall carry out the vocational training at the employer's level by means of special contracts.

(2) The trainer shall be appointed by the employer from amongst the skilled employees, with a vocational experience of at least 2 years in the field in which the vocational training is to take place.

(3) A trainer may provide training to no more than 3 employees at the same time.

(4) The exercise of the vocational training activity shall be included in the trainer's normal work schedule.

ART. 207

(1) The trainer shall be under the obligation to receive, help, inform, and guide an employee throughout the duration of the special vocational training contract, and to supervise the compliance with the job duties corresponding to the position of the employee under training.

(2) The trainer shall facilitate the co-operation with other training bodies, and participate in the evaluation of the employee having benefited from vocational training.

CHAPTER III

On-the-job apprenticeship contract

ART. 208

(1) The on-the-job apprenticeship shall be organised based on an apprenticeship contract.

(2) An on-the-job apprenticeship contract shall be a particular type of individual labour contract, based on which:

a) an employer, as a legal or natural person, shall undertake to provide the apprentice with vocational training in a certain trade according to its field of activity, apart from the payment of the wage;

b) an apprentice shall undertake to attend the vocational training classes and to work under that employer.

(3) The on-the-job apprenticeship contract shall be concluded for a definite period.

ART. 209

(1) A person employed based on an apprenticeship contract shall be deemed an apprentice.

(2) An apprentice shall benefit from the provisions applicable to the other employees as long as they do not come against the ones typical of his status.

ART. 210

The organisation, progression and control of the apprenticeship activity shall be regulated by a special law.

TITLE VII Social dialogue

CHAPTER I General provisions

ART. 211

In order to ensure the climate of stability and social peace, the law shall regulate the manner in which consultations and permanent dialogue between the social partners take place.

ART. 212

(1) The Economic and Social Council is a tripartite, autonomous public institution of national interest, established for the purpose of achieving the tripartite nation-wide dialogue.

(2) The organisation and functioning of the Economic and Social Council shall be established by special law.

ART. 213

Consultative committees, attached to ministries and prefects offices, shall operate, under the law, to uphold social dialogue between the public administration, trade unions, and employers' organisations.

CHAPTER II Trade unions

ART. 214

(1) The trade unions, the trade union federations and confederations, hereinafter called trade union organisations shall be constituted by employees based on the free association right, for the purpose of promotion of their professional, economic and social interests, as well as of defending their individual and collective rights provided in the collective and individual labour contracts or in the collective labour agreements and the work relationships, as well as in the national legislation, in the international pacts, treaties and conventions of which Romania is a party.

(2) The establishment, organisation and functioning of trade unions shall be regulated by law.

ART. 215

Trade unions shall participate, through their own representatives, under the law, in negotiations and the conclusion of collective labour contracts, in talks or agreements with the public authorities and the employers' organisations, as well as in the structures typical of the social dialogue.

ART. 216

The trade unions may become associated, based on their free consent, under the law, in federations, confederations, or territorial unions.

ART. 217

The employee's exercise of their trade union rights shall be acknowledged by all employers, their rights and freedoms guaranteed in the Constitution being observed, in compliance with the provisions of the present code and of the special laws.

ART. 218

(1) All intervention by the public authorities liable to limit the trade union rights or to prevent their lawful exercise shall be prohibited.

(2) Also, all interference by the employers or employers' organisations, either directly or by means of their representatives or members, in the establishment of trade unions or in the exercise of their rights shall be prohibited.

ART. 219

At the request of their members, trade unions may represent them in labour conflicts, under the law.

ART. 220

(1) The representatives elected in the management bodies of trade unions shall be protected by the law against all forms of conditioning, constraint or limitation of the exercise of their offices.

(2) For the entire duration of their mandate, the representatives elected in the trade union management bodies may not be dismissed for reasons relating to the carrying out of the mandate received from the employees in the unit.

(3) Other steps for protecting the persons elected in trade union management bodies are provided for in special laws and in the applicable collective labour contract.

CHAPTER III

Employees' representatives

ART. 221

(1) At employers who have more than 20 employees and at which there are not constituted representative trade union organisations according to the law, the employees' interests may be promoted and defended by their representatives, specially elected and authorised for this purpose.

(2) Employees' representatives shall be elected in the employees' general meeting, based on the vote by at least half of the total number of employees.

(3) Employees' representatives may not carry out activities which, under the law, may only be carried out by trade unions.

ART. 222

(1) Employees who have full exercise capacity may be elected as employees' representatives.

(2) The number of elected employees' representatives shall be mutually agreed upon with the employer, according to his number of employees.

(3) The duration of the mandate of the employees' representatives shall not exceed 2 years.

ART. 223

The employees' representatives shall have the following main responsibilities:

a) to monitor the compliance with the employees' rights, in accordance with the legislation in force, the applicable collective labour contract, the individual labour contracts, and the internal regulations;

b) to participate in the drawing up of the internal regulations;

c) to promote the employees' interests concerning wages, work conditions, work time and rest time, labour stability, as well as any other professional, economic and social interests related to labour relationships;

d) to notify the labour inspectorate about the non-compliance of the provisions of the law and the applicable collective labour contract.

e) to negotiate the collective labour contract, under the law.

ART. 224

The responsibilities of the employees' representative, the way these are met, as well as the duration and limits of their mandate shall be set forth in the employees' general meetings, under the law.

ART. 225

The number of hours within the normal working schedule for the employees' representatives intended for achieving the mandate they received shall be established by the applicable collective labour contract or, in its absence, by direct negotiation with the management of the unit.

ART. 226

For the entire duration of their mandate, the employees' representatives may not be dismissed for reasons relating to carrying out the mandate received from the employees.

CHAPTER IV

Employers' organisations

ART. 227

(1) The owners, also called organisations of employers, constituted under the law, are organisations of employers, autonomous, with no political character, set up as legal persons of private law, without patrimony purpose.

(2) The employers may associate in federations and/or confederations or other associative structures, according to the law.

ART. 228

The setting up, organisation and functioning of owners, as well as the exercise of their rights and obligations shall be regulated by special law.

TITLE VIII

Collective labour contracts

ART. 229

(1) The collective labour contract shall be the agreement concluded in a written form between the employer or the employers' organisation, on the one hand, and the employees, represented by their trade unions or in any other manner stipulated by the law, on the other hand, in which clauses are set up concerning the work conditions, the wages, as well as other rights and liabilities deriving from the labour relationships.

(2) Collective negotiation at unit level shall be mandatory, except when the employer has less than 21 employees.

(3) When negotiating the clauses and concluding the collective labour contracts, the parties shall be equal and free.

(4) The collective labour contracts, concluded in compliance with the provisions of the law, shall constitute the law of the parties.

ART. 230

The parties, their representation, as well as the procedure for negotiating and concluding the collective labour contracts shall be established according to the law.

TITLE IX

Labour conflicts

CHAPTER I

General provisions

ART. 231

The labour conflicts are the conflicts between employees and employers regarding the economic, professional or social interests or the rights resulted from carrying on the work relationships.

ART. 232

The procedure for resolving labour conflicts shall be set forth by a special law.

CHAPTER II

Strike

ART. 233

Employees shall be entitled to strike with a view to defending their professional, economic, and social interests.

ART. 234

(1) A strike means a voluntary or collective cessation of work by the employees.

(2) The employees' participation in the strike shall be free. No employee shall be constrained to participate in a strike or not.

(3) The limitation or prohibition of the right to strike may only take place in the cases and for the employee categories expressly stipulated by the law.

ART. 235

The participation in a strike, as well as its organisation under the law, shall not mean a violation of the employees' obligations and may not have disciplinary sanctions against the employees on strike or the organisers of the strike as a consequence.

ART. 236

The manner in which the right to strike is exercised, the organisation, the start and the progress of the strike, the procedures prior to the start of the strike, the suspension and termination of the strike, as well as other aspects related to the strike shall be regulated by a special law.

TITLE X

Labour Inspectorate

ART. 237

The implementation of the general and special regulations in the field of labour relationships, labour safety and health shall be subject to the control by the Labour Inspection, which is a specialised body of the central public administration, having a legal status, under the Ministry of Labour, Family and Social Protection.

ART. 238

Territorial labour inspectorates, organised in each county and in Bucharest municipality, shall be subordinated to the Labour Inspection.

ART. 239

A special law shall regulate the establishment and organisation of the Labour Inspection.

ART. 240

By way of derogation from the provisions of Article 3 (2) of Law No 252/2003 on the single audit register, in case of controls which have as objective the discovery of labour without legal forms, the labour inspectors shall fill in the single audit register after the performing of the control.

TITLE XI

Legal liability

CHAPTER I

Internal regulations

ART. 241

The employer shall draw up the internal regulations after consultations with the trade union or the employees' representatives, as applicable.

ART. 242

The internal regulations shall comprise at least the following categories of provisions:

- a) rules on labour protection, hygiene and safety inside the unit;
- b) rules on the compliance with the principle of non-discrimination and removal of any form of dignity violation;
- c) rights and obligations of the employer and employees;
- d) procedure for solving the employees' individual requests or complaints;
- e) concrete rules on labour discipline within the unit;
- f) disciplinary departures and applicable sanctions;
- g) rules concerning the disciplinary procedure;
- h) how to implement other specific provisions of the law or contract;
- i) criteria and procedures of professional evaluation of the employees.

ART. 243

(1) The internal regulations shall be notified to the employees' knowledge through the good offices of the employer and shall start its effects on the employees from the time of such notification.

(2) The employer shall have the obligation to inform the employees about the contents of the internal regulations.

(3) The actual manner in which each employee is informed about the contents of the internal regulations shall be set forth in the applicable

collective labour contract or, as applicable, in the contents of the internal regulations.

(4) The internal regulations shall be posted at the employer's head office.

ART. 244

Any amendment in the contents of the internal regulations shall be subject to the notification procedures stipulated under Article 243.

ART. 245

(1) Any interested employee may notify the employer about the provisions of the internal regulations if proof is made of the violation of one of his rights.

(2) The check of the lawfulness of the provisions of the internal regulations shall belong to the jurisdiction of the courts of law that shall be notified within 30 days from the date of the employer's answer concerning the solution to the notification filed under paragraph (1).

ART. 246

(1) The drawing up of the internal regulations at the level of each employer shall be done within 60 days from the date of the present code coming into effect.

(2) In the case of employers established after the present code's coming into effect, the 60-day delay stipulated under paragraph (1) shall start on the day when they acquire legal personality.

CHAPTER II

Disciplinary liability

ART. 247

(1) The employer shall have a disciplinary prerogative, being entitled to apply, under the law, disciplinary sanctions onto his employees whenever he should find they have had departures from the discipline.

(2) A departure from discipline shall be a work-related action which consists of an action or non-action blamefully performed by an employee, who has thus violated the provisions of the law, the internal regulations, the individual labour contract or the applicable collective labour contract or the lawful orders or orders by his superiors.

ART. 248

(1) The disciplinary sanctions that the employer may apply if an employee should commit a departure from discipline shall be:

a) a written warning;

b) demotion, with wages corresponding to the position to which the demotion has taken place, for a duration which may not exceed 60 days;

c) a 5 to 10 percent reduction in the basic wages for a duration of 1 to 3 months;

d) a 5 to 10 percent reduction in the basic wages and/or, as applicable, in the management allowance for a period of 1 to 3 months;

e) termination of the individual labour contract for disciplinary reasons.

(2) If, by means of vocational statutes approved by a special law, another sanction regime should be established, the latter shall apply.

(3) The disciplinary sanction shall be rightfully struck off within 12 months from the application, if a new disciplinary sanction is not applied to the employee within this term. The striking off of the disciplinary sanctions shall be established by written decision of the employer.

ART. 249

(1) Disciplinary fines shall be prohibited.

(2) Only one sanction may be applied for the departure from discipline.

ART. 250

The employer shall establish the applicable disciplinary sanction in relation to the seriousness of the departure from discipline committed by an employee, taking the following into consideration:

a) the circumstances under which the action took place;

b) the employee's guilt degree;

c) the consequences of the departure from discipline;

d) the employee's general behaviour at work;

e) possible disciplinary sanctions previously undergone by him.

ART. 251

(1) Under the sanction of absolute nullity, no step, except for the one stipulated under Article 248 (1) a), shall be ordered before a preliminary disciplinary inquiry is carried out.

(2) In view of the preliminary disciplinary inquiry, the person authorised by the employer to make the inquiry shall summon the employee in writing, stating the reason, date, time, and place of the meeting.

(3) An employee's failure to come to the meeting summoned under paragraph (2) without an objective reason shall entitle the employer to order sanctions, without the preliminary disciplinary inquiry.

(4) During the preliminary disciplinary inquiry, an employee shall have the right to submit and defend all evidence in his defence, and to offer the person in charge of the inquiry all the evidence and motivations he deems necessary, as well as the right to be assisted, at his request, by a representative of the trade union which he is a member of.

ART. 252

(1) The employer shall order the implementation of a disciplinary sanction by means of a written order, within 30 calendar days from the date of acknowledging the departure from discipline, but no later than 6 months from the date the action was committed.

(2) Under the sanction of absolute nullity, the decision shall comprise, in a mandatory manner:

a) the description of the action representing a departure from discipline;
b) the mention of the provisions of the personnel statute, the internal regulations, the individual labour contract or the applicable collective labour contract which have been violated by the employee;

c) the reasons for which the defending arguments submitted by the employee during the preliminary disciplinary inquiry have been rejected, or the reasons for which, under the terms of Article 251 (3), no such inquiry has been carried out;

d) the lawful grounds of the disciplinary sanction being applied;

e) the delay within which the sanction may be contested;

f) the competent court of law before which the sanction may be challenged.

(3) The sanction decision shall be notified to such employee no later than 5 calendar days from the date of its issuance and shall cause effects from the date of notification.

(4) The notification shall be served to the employee himself, against signature of receipt, or, if he should refuse to accept it, by registered mail, sent to the domicile or residence communicated by him.

(5) The employee may contest the sanction decision before the competent courts of law within 30 calendar days from the date of notification.

CHAPTER III

Patrimony liability

ART. 253

(1) The employer shall, pursuant to the norms and principles of contractual civil liability, indemnify the employee if the latter has undergone material or moral damage because of the employer's fault during the performance of his job duties or while performing a job-related activity.

(2) If the employer should refuse to indemnify the employee, the latter shall be entitled to file a complaint with the competent court of law.

(3) An employer who has paid the indemnity shall recover the respective amount from the employee who was to blame for the damage, under the terms of Article 254 and the subsequent ones.

ART. 254

(1) The employees shall be patrimonially liable, according to the norms and principles of contracting civil liability, for the material damages caused to the employer because of their fault and in relation to their work.

(2) Employees shall not be liable for damages caused by a force majeure or other unpredictable causes which could not have been prevented, or damages included in the normal risk of the job.

(3) If the employer establishes that its employee has caused a damage by his fault and in connection to his work, it may request to the employee, by a finding and evaluation note of the damage, the recovery of its equivalent value, by the parties' agreement, within a term which may not be less than 30 days from the communication date.

(4) The equivalent value of the damage recovered by the parties' agreement, according to paragraph (3), may not exceed the equivalent of 5 minimum gross wages on the economy.

ART. 255

(1) When the damage has been caused by several employees, the amount of liability for each one shall be established in relation to the extent to which they have contributed to the damage.

(2) If the extent to which they have contributed to the damage cannot be established, the liability of each one shall be in proportion to his net wages on the date of finding the damage and, when applicable, depending on the time of work actually completed since its last inventory, too.

ART. 256

(1) An employee who has cashed in an amount not due to him from the employer shall have to return it.

(2) If an employee has received goods which were not due to him and which can no longer be returned in kind, or if services to which he was not entitled have been provided to him, he shall have to cover their value. The value of the goods or services in question shall be established based on their value on the date of payment.

ART. 257

(1) The amount established for covering the damage shall be withheld, in monthly instalments, from the wages due to the person in question by his employer.

(2) Instalments shall not exceed one third of the net monthly wages, and shall not exceed, along with the other possible amounts withheld from the person in question, one half of those wages.

ART. 258

(1) If the individual labour contract is terminated before the employee has indemnified the employer and he becomes employed by another employer or becomes a civil servant, the due amounts shall be withheld from his wages by the new employer or new institution or public authority, as applicable, based on an executory title transmitted to this effect by the employer having suffered the damage.

(2) If the person in question has not been hired by another employer, based on an individual labour contract or as a civil servant, the damage shall be covered by foreclosure of his assets, under the Civil Procedure Code.

ART. 259

If the damage may not be covered by means of amounts withheld from wages within a delay of no more than 3 years from the date the first withheld instalment was made, the employer shall be entitled to call on a court executor under the Civil Procedure Code.

CHAPTER IV

Contraventional liability

ART. 260

(1) The following actions shall be seen as contravention and sanctioned as follows:

- a) the non-compliance with the provisions concerning the payment guarantee of the national gross minimum wages, with a fine from ROL 300 to ROL 2 000;
- b) the violation by an employer of the provisions of Article 34 (5), with a fine from ROL 300 to ROL 1 000;
- c) the preventing an employee or group of employees from participating in a strike or obliging them to work during a strike or forcing them to do this, by means of threats or violence, with a fine from ROL 1 500 to ROL 3 000;
- d) the stipulation in the individual labour contract of clauses contrary to the provisions of the law, with a fine from ROL 2 000 to ROL 5 000;
- e) the employment of up to 5 persons without the conclusion of an individual labour contract, according to Article 16 (1), with a fine from RON 10 000 to RON 20 000 for each identified person;
- f) the performing of work by a person without the conclusion of an individual labour contract, with a fine from RON 500 to RON 1 000;
- g) the violation by the employer of the provisions of Articles 139 and 142, with a fine from ROL 5 000 to ROL 10 000;

h) the violation of the obligation stipulated under Article 140, with a fine from ROL 5 000 to ROL 20 000;

i) the non-compliance with the provisions on extra work - a fine from ROL 1 500 to ROL 3 000;

j) the non-compliance with the provisions of the law on granting one's weekly rest, with a fine from ROL 1 500 to ROL 3 000;

k) the failure to grant the emolument provided in Article 53 (1), if an employer should interrupt his activity temporarily but still maintaining labour relations, with a fine from ROL 1 500 to ROL 5 000;

l) the violation of the provisions of the law concerning night work, with a fine from ROL 1 500 to ROL 3 000;

m) the violation by the employer of the obligation provided in Articles 27 and 119, with a fine from RON 1 500 to RON 3 000;

n) the non-compliance with the legal provisions concerning the registration by the employer of the resignation, with a fine from RON 1 500 to RON 3 000;

o) the violation by the temporary labour agent of the obligation provided in Article 102, with a fine from RON 5 000 to RON 10 000, for each identified person, without exceeding the cumulated value of RON 100 000;

p) the violation of the provisions of Article 16 (3), with a fine from RON 1 500 to RON 2 000.

(2) Labour inspectors shall be those in charge of finding contraventions and applying sanctions.

(3) The provisions of the laws in force shall apply to the contraventions stipulated under paragraph (1).

CHAPTER V

Criminal liability

ART. 261

Failure to implement a final court decree on the payment of the wages within 15 days from the date of the implementation request sent to the employer by the interested party shall constitute an offence punishable by prison from 3 to 6 months or a fine.

ART. 262

Failure to implement a final court decree on an employee's reinstatement shall constitute an offence punishable by prison from 6 months to 1 year or a fine.

ART. 263

(1) In the case of the offences stipulated by Articles 261 and 262, the criminal action shall be started upon complaint by the injured party.

(2) An agreement reached by the parties shall remove the criminal liability.

ART. 264

(1) The deed of the person who, repeatedly, establishes for the employees hired based on the individual labour contract wages under the level of the basic minimum gross wage on the country guaranteed for payment, provided by law, shall constitute an offence and shall be punished with prison from 6 months to one year or with criminal fine.

(2) The offence which consists in the repeated refusal of a person to allow, according to law, the access of the labour inspectors in any of the unit's spaces or to place at their disposal the solicited documents, according to law, shall also be sanctioned with the punishment provided in paragraph (1).

(3) The accepting at work of more than 5 persons, irrespective of their citizenship, without the conclusion of an individual labour contract, shall constitute an offence and shall be punished with prison from one to 2 years or with criminal fine.

ART. 265

(1) Employing minors while failing to comply with the provisions of the law as regard to age or using such persons to perform certain activities in violation of the provisions of the law on the labour status of minors shall constitute an offence and shall be punishable by prison from 1 to 3 years.

(2) The accepting at work of a person who is in situation of illegal staying in Romania, knowing that he is victim of the human trafficking, shall be sanctioned with the punishment provided in Article 264 (3).

(3) If the work performed by the person provided in paragraph (2) and in Article 264 (3) is of nature to put in danger his life, integrity or health, the punishment shall be prison from 6 months to 3 years.

(4) In case of committing one of the offences provided in paragraphs (2) and (3) and in Article 264 (3), the court of law may dispose the applying of one of the following complementary punishments:

a) the total or partial loss of the employer right to benefit of public performings, aids or subsidies, including European Union funds managed by the Romanian authorities, for a period of up to 5 years;

b) the prohibition of the employer right to participate at the assignment of a public procurement contract for a period of up to 5 years;

c) the total or partial recovery of the public performings, aids or subsidies, including European Union funds managed by the Romanian authorities,

assigned to the employer for a period of up to 12 months before the commission of the offence;

d) the temporary or definitive closing of the work point or points in which the offence has been committed or the temporary or definitive withdrawal of a licence of carrying out the professional activity in question, if that is justified by the gravity of the violation.

(5) In case of committing one of the offences provided in paragraphs (2) and (3) and in Article 264 (3), the employer shall be under the obligation to pay the amounts representing:

a) any outstanding remuneration owed to the illegally hired persons. The quantum of the remuneration is supposed to be equal to the gross average wage on the economy, except for the case in which either the employer or the employee can prove the contrary;

b) the quantum of all taxes, duties and social insurance contributions which the employer would have paid if the person had been legally hired, including the corresponding delay penalties and administrative fines;

c) the expenses determined by the transfer of the outstanding payments in the country in which the illegally hired person has returned voluntarily or has been sent back under the law.

(6) In case of committing one of the offences provided in paragraphs (2) and (3) and in Article 264 (3) by a subcontractor, the main contractor, as well as any intermediate subcontractor, if they knew that the employer subcontractor had hired foreigners found in a situation of illegal stay, may be obliged by the court, jointly with the employer or in place of the employer subcontractor or of the contractor whose direct subcontractor is the employer, at the payment of the amounts of money provided in paragraph (5) a) and c).

TITLE XII

Labour jurisdiction

CHAPTER I

General provisions

ART. 266

The object of the labour jurisdiction shall be to solve labour conflicts concerning the conclusion, execution, amendment, suspension, and termination of individual or, as applicable, collective labour contracts stipulated in the present code, as well as the requests concerning the legal relationships between social partners, set forth under the present code.

ART. 267

The following may constitute parties in a labour conflict:

- a) the employees, as well as any other person having a right or obligation under the present code, other laws, or the collective labour contracts;
- b) the employers - natural and/or legal persons -, temporary labour agents, users, as well as any other person benefiting from work carried out under the present code;
- c) the trade unions and employers' organisations;
- d) other legal or natural persons involved in this field based on special laws or the Civil Procedure Code.

ART. 268

(1) The petitions for the solution of a labour contract shall be filed:

- a) within 30 calendar days from the date the employer's unilateral decision concerning the conclusion, execution, amendment, suspension, or termination of an individual labour contract was notified;
- b) within 30 calendar days from the date a decision of disciplinary sanction has been notified;
- c) within 3 years from the onset date of the right to take action, if the object of the individual labour conflict should consist of the payment of not granted wages or damages towards the employee, as well as in the event of the employees' patrimony liability to the employer;
- d) throughout the existence of the contract, if the request is made to find the nullity of an individual or collective labour contract or its clauses;
- e) within 6 months from the onset date of the right to take action, in the event of the non-execution of the collective labour contract or clauses of it.

(2) In all circumstances other than the ones stipulated under paragraph (1), the delay shall be 3 years from the onset date of such right.

CHAPTER II

Material and territorial competence

ART. 269

(1) The competence for judging labour conflicts shall belong to the courts established according to the Civil Procedure Code.

(2) The petitions concerning the causes stipulated under paragraph (1) shall be filed with the competent court having jurisdiction over the petitioner's domicile or residence or head office, as applicable.

CHAPTER III

Special procedure rules

ART. 270

The causes stipulated under Article 266 shall be exempted from the legal fee and the legal stamp.

ART. 271

(1) The petitions concerning the solution to labour conflicts shall be judged as emergencies.

(2) Trial delays shall not exceed 15 days.

(3) The procedure for the parties' citation shall be deemed as lawfully accomplished if completed at least 24 hours before the trial deadline.

ART. 272

The employer shall be responsible for providing evidence in labour conflicts, being obliged to submit evidence in his defence by the first day of trial.

ART. 273

Evidence shall be produced under the emergency, and the court shall be entitled to deny the benefit of the admissible evidence to the party delaying such submittal without good grounds.

ART. 274

Decisions rendered by the judging court shall be rightfully final and executory.

ART. 275

The provisions of the Civil Procedure Code shall complete the provisions of the present title.

TITLE XIII

Transitory and final provisions

ART. 276

Under the international obligations taken on by Romania, the labour legislation shall be kept in permanent harmonisation with the European Union standards, the agreements and recommendations of the International Labour Organisation, and the standards of the international labour law.

ART. 277

(1) For the purposes of the present code, the management positions are the ones defined by law or by internal regulations of the employer.

(2) The present law transposes Article 16 b), Articles 18 and 19 of Directive 2003/88/CE of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working, published in the Official Journal of the European Union, L 299 of 18

November 2003, and Articles 3, 4 and 10 of Directive 2008/104/CE of the European Parliament and of the Council of 19 November 2008 on temporary agency work, published in the Official Journal of the European Union, L 327 of 5 December 2008.

ART. 278

(1) The provisions of the present code shall be completed by the other provisions in the labour legislation and, unless inconsistent with the typical labour relationships stipulated in the present code, the provisions of the civil legislation.

(2) The provisions of the present code shall also apply as common law to those legal labour relationships not based on an individual labour contract, unless the special regulations are complete, and their implementation is inconsistent with such typical labour relationships.

ART. 279

(1) The record of employment card shall prove the length of service existing by 31 December 2010.

(2) After the date when Decree No 92/1976 on the record of employment card, as amended, is repealed, the length of service established by 31 December 2010 shall be reconstituted, at the request of the person who has no record of employment card, by the court of law having the competence for solving labour conflicts, based on writs or other evidence proving the existence of labour relationships. Reconstitution petitions filed prior to the date when Decree No 92/1976, as amended, is repealed, shall be solved under the provisions of that statutory instrument.

(3) Employers who keep record of employment card and have them filled out shall release them to their owners at intervals, by 30 June 2011, based on an individual handover-receipt written report.

(4) The territorial labour inspectorates that keep employees' record of employment card shall release the latter by the date stipulated under paragraph (3), under the terms set forth by order of the minister of labour, family and equal opportunities.

(5) The announcement regarding the loss of the employment cards issued pursuant to the Decree No 92/1976, as amended, shall be published in the Official Gazette of Romania, Part III.

ART. 280

On the date of the present code comes into effect, the cases concerning labour conflicts appearing on the dockets of courts shall continue to be judged under the trial provisions applicable on the date the courts were notified.

ART. 281

(1) The present code shall enter into force on 1 March 2003.

(2) On the date the present code comes into force, the following documents shall be repealed:

- Labour Code of the Socialist Republic of Romania, Law No 10/1972, published in the Official Bulletin, Part I, No 140 of 1 December 1972, as amended and supplemented;

- Law No 1/1970 - Law of labour organisation and discipline in socialist units, published in the Official Bulletin, Part I, No 27 of 27 March 1970, as amended and supplemented;

- Decree No 63/1981 on the recovery of damages caused to public wealth, published in the Official Bulletin, Part I, No 17 of 25 March 1981;

- Law No 30/1990 on hiring employees based on their competence, published in the Official Gazette of Romania, Part I, No 125 of 16 November 1990;

- Law No 2/1991 on cumulated offices, published in the Official Gazette of Romania, Part I, No 1 of 8 January 1991;

- Law of the remuneration No 14/1991, published in the Official Gazette of Romania, Part I, No 32 of 9 February 1991, as amended and supplemented;

- Law No 6/1992 on rest leave and other leaves of the employees, published in the Official Gazette of Romania, Part I, No 16 of 10 February 1992;

- Law No 68/1993 on the guaranteed payment of the minimum wages, published in the Official Gazette of Romania, Part I, No 246 of 15 October 1993;

- Law No 75/1996 on establishing the non-working days that are lawful holidays, published in the Official Gazette of Romania, Part I, No 150 of 17 July 1996, as amended and supplemented;

- Articles 34 and 35 of Law No 130/1996 on the collective labour contract, republished in the Official Gazette of Romania, Part I, No 184 of 19 May 1998;

(3) On 1 January 2011, the provisions of Decree No 92/1976 on the record of employment card, published in the Official Bulletin, Part I, No 37 of 26 April 1976, as amended, shall be repealed.

NOTE:

We reproduce below the provisions of Articles II, III and IV of Law No 40/2011 amending and supplementing the Law No 53/2003 - Labour Code, that are not incorporated in the republished version of the Law No 53/2003 -

Labour Code and that shall be applied further as own dispositions of the modifying instrument:

"ART. II

(1) The collective labour contracts and the additional deeds concluded during the period from the date of entry into force of this law and up to 31 December 2011 may not provide a validity duration that exceeds 31 December 2011. After this date, the collective labour contracts and the additional deeds shall be concluded for durations established by special law.

(2) The collective labour contracts implemented on the date of entry into force of the present law shall produce their effects until the date of expiry of the term for which they have been concluded.

ART. III

On the date of entry into force of this law there shall be repealed:

- the Article 23 (1) of Law No 130/1996 on the collective labour contract, republished in the Official Gazette of Romania, Part I, No 184 of 19 May 1998, as amended and supplemented;

- the Article 72 of Law No 168/1999 on the settlement of industrial conflicts, published in the Official Gazette of Romania, Part I, No 582 of 29 November 1999, as amended and supplemented.

ART. IV

This law shall enter into force within 30 days from the date of the publication in the Official Gazette of Romania, Part I."
