

Labour/employment law data for Romania

1.	Is it a legal requirement that employees must receive an employment contract?	<p>Yes. According to the Romanian Labour Code, an individual employment contract shall be concluded on the basis of the consent of the employer and the employee, in written form and into Romanian language. The obligation to conclude the individual employment contract incurs to the employer. Such an obligation for the employer shall be dealt with before the beginning of the employment relationships.</p> <p>The absence of a written contract is sanctioned with a fine applied to the employer. Moreover, the existence of an employment contract can be proved by the employee with any other type of evidence (i.e. witness).</p>
2.	What factors constitute a fair dismissal i.e. legally justifiable reasons to terminate employment without the need to pay compensation?	<p>The Romanian Labour Code provides the limitative cases which represent grounds for dismissal. The employer can decide, therefore, the dismissal (i) either for reasons related to the employee (termination for cause) (e.g. acts of gross misconduct or repeated acts of misconduct committed by the employee; professional unfitness; etc.); or (ii) for reasons not related to the employee (termination without cause) due to suppression of working places. At the termination of the employment contract for reasons not related to the employee, the employer shall grant the employee compensation in an amount of at least one monthly salary.</p>
3.	What is good practice with regard to dismissal procedures to minimize the risk of claims for unfair dismissal?	<p>The employer must prove that the dismissal decision was taken both by following the mandatory procedure and the formal and substantial requirements provided by the law. Thus, according to the reason for the dismissal, the employer should observe the following: (i) in case of dismissal for disciplinary reasons, the employer must perform the preliminary disciplinary investigation prior to the dismissal of the employee, in order to establish whether or not the employee committed the acts of misconduct and to issue the termination decision within the legal time bar and form required by the law; (ii) in case of dismissal for reasons not related to the employee (collective dismissal) the employer is obliged <i>inter alia</i> to initiate consultations with the trade unions/employers' representatives; (iii) the employer must comply with the notice periods for each case of dismissal; etc.</p>
4.	If an employee is dismissed unfairly what is the financial range of compensation that can be made to employees?	<p>There is no legal provision in connection with the financial compensation for unfair dismissal. Thus, the amount of the compensation is to be established by negotiating with the employee or by the court, whenever the employee asks for damages due to unfair dismissal.</p>
5.	Do employees have the right to be members of a trade union?	<p>Yes. Employees have the right to set up or join a trade union. Such a right is granted by the Romanian Constitution and by the Romanian Labour Code. It will be, therefore, considered unfair dismissal any termination of the employment contract for reasons related to the affiliation of the employee to a trade union. It is prohibited any intervention of the public authorities which is likely to abridge the right to unionisation or hinder the legal exercise of a trade union. It is also prohibited any encroachment of the employers directly or through their representatives or members, on the establishment of the trade unions or exercise of their rights.</p>
6.	Is there any legal requirement for an employer to contribute to a pension for	<p>Yes. An employer is obliged to contribute to the social security system. It is mandatory for the employer to monthly calculate, retain from the employee's monthly salary and pay to the territorial pension authority this social contribution.</p>

	employees?	
7.	What are standard maternity rights?	The employee is entitled to 126 days of paid maternity leave (generally, 63 before the birth and 63 after). The arrangement of such a leave remains at the sole option of the employee but being obliged to consider a mandatory minimum of 42 days leave after birth. The employer cannot dismiss the employee during the maternity leave. The allowance for maternity is fully paid by the social security funds. The employee shall receive a maternity allowance of 85% of the monthly gross revenue. The employer shall be obliged to pay, for a period of 6 weeks, the rest of 15%.
8.	What are parental leave rights (including paternity leave)?	The parental leave represents an employee benefit that provides paid time off work to take care for a child until the age of 2 years. Such a paid leave is granted to the employee after the birth or after the termination of the rights corresponding to the maternity leave, depending on the moment of introducing the demand by the employee. The employer cannot dismiss the employee within the parental leave. The employees obtaining for a period of at least 12 months, a taxable income are entitled to benefit from the parental leave and to receive a corresponding monthly allowance. The allowance is generally either a determined amount or, at the sole option of the employee, a percentage out of the average income for the past 12 months, up to a certain limit. The income includes the base salary and all permanent bonuses granted to the employee in accordance with the provisions of the individual labour contract. The same rights are applicable for paternity leave.
9.	When are employees eligible for redundancy payments?	<p>As a matter of principle, the applicable law does not provide criteria of eligibility for the granting of the severance payment for the employees. Therefore, all the employees have right to receive compensatory payments. In case of individual termination of the employment contract for reasons not related to the employee (termination for cause), the employer is obliged to grant the employee compensation in the amount of at least one monthly salary besides covering all outstanding payments due to the employee.</p> <p>In the event of collective dismissals (termination without cause), granting of compensation shall be done in accordance with the legal provisions and the applicable collective bargaining agreements, starting from at least one monthly salary. Notice should be made with regard Emergency Ordinance no. 98/1999 which is at time still in force and contains legal provisions derogating from those provided in the Romanian Labour Code and the Labour Bargaining Agreement at National Level with regards to the regime of severance payments (e.g. eligibility criteria, amount of compensation etc.). The law doctrine is not unitary as regards the applicability at time being of this enactment, since it was initially designed to protect the employers of the state owned companies in process of reorganization/privatization in the late 90's</p>
10.	What are the statutory redundancy payment limits?	In case of individual/collective dismissals, granting of compensation shall be performed in accordance with the legal provisions and the applicable collective bargaining agreements, starting from at least one monthly salary.
11.	Can existing employees be dismissed if you buy a business with employees?	No. The Romanian law on the protection of employees' rights in the event of a transfer of an undertaking, business, or part of an undertaking or business transposes the Directive 2001/23/EC (directive on the acquired rights) on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. In case of a legal transfer or merger the transferor's rights and obligations arising from individual employment contracts and/or collective bargaining agreements

		<p>existing on the date of a transfer must be transferred to the transferee. The law duly provides that the employees shall enjoy the protection of their rights in case of transfer of the undertaking, establishment or parts thereof to other employer. The rights and obligations of the assignor, arising from an employment contract or relation existing at the date of the transfer, shall be entirely transferred to the assignee. The transfer of the undertaking, establishment or parts of it may not be a reason of individual/collective or dismissal for the assignor or the assignee.</p>
12.	Any other general legislation?	<p>Collective Bargaining Agreement on National Level; Social security legislation and all laws implementing European Directives.</p>