

LABOR LAW ASPECTS IN THE CONTEXT OF COVID-19

PARENTAL LEAVE

In the light of the new legislative amendments, employees who are parents¹ will benefit from leave to care for their children, if the following objective or subjective **conditions** are cumulatively met, depending on the case:

- Educational establishments where children are enrolled must be temporarily closed (thus, the child must be enrolled at any type of educational establishment, namely kindergartens, schools, high schools, etc.);
- Employees' children enrolled at an educational establishment must be younger than 12 and, in the case of disabled children enrolled at an educational establishment, the latter must be younger than 18;
- The positions held by such employees must not allow for work from home or telework;
- Employees requesting days off must not be in one or several of the following situations: (i) on child-raising leave, (ii) the personal care assistant of one of the dependent children, (iii) on annual/unpaid leave, (iv) their employment agreement is suspended as a result of the employer's activity being disrupted [temporary layoff (*in Romanian "somal tehnic"*)] or (v) the other parent does not obtain a salary or an income similar to salaries, income from self-employment, income from intellectual property rights, income from agricultural, forestry and fish farming activities.

Employers, irrespective of whether they are public or private entities, must grant the leave requested by their employees. By way of exception, the leave will be granted only with the employer's consent in case they conduct their business in one of the following fields/sectors of activity: national energy sector, operative units of nuclear sectors, continuous fire units, health and social care units, telecommunications, public radio and television, rail transport, units which ensure public transport

¹ **The "parent" notion** includes the following meanings: (i) actual parent, (ii) adopter, (iii) person to whom the child/children has/have been entrusted for adoption, (iv) person with whom the child is placed or whose guardian they are, (v) person designated to care for the child during the parent or guardian's absence, (vi) parent or legal representative of the disabled adult enrolled at an educational establishment, (vii) parent or legal representative of the unschooled seriously disabled child, who opted to receive the allowance, only if their day job activity is suspended and (viii) parent or legal representative who cares for, supervises and supports the adult person with a serious disability or with a serious disability having a personal care assistant, who chose to receive the allowance, only if they benefit from day services the activity of which was suspended.



and sanitation of localities, as well as the supply of population with gas, electricity, heat, and water, food trade, production and distribution of medicines and sanitary equipment, distribution of fuels and pharmaceutical units.

Settlement: Employers can be reimbursed solely for the amounts representing the net allowance actually cashed in by the parent, the taxes and social security contributions related to the allowance being borne by the employer. In order to obtain reimbursement, employers shall submit the following documents with the County Employment Authority: (i) the request for reimbursement of the amount representing the allowance; (ii) the list of employees who benefitted from days off, as well as the allowance they benefitted from, (iii) statement on own responsibility of the legal representative attesting that employees meet the conditions provided by the law²; (iv) copies of the payrolls attesting that the allowance was granted, and (v) the proof of paying the contributions and taxes corresponding to the month in which the allowance was paid.

Numbers of paid days off which may be granted: Paid days off may be granted for all business days throughout the state of alert, including the business days during school holidays, in case educational establishments or before preschool learning facilities are temporarily closed, until the end of the school year.

For the year 2020, the number of paid days off for one of the parents is established until the end of the 2019-2020 school year.

Paid days off may not be granted to employees of the national defense system, employees of penitentiaries, personnel of public health units, personnel of residential social services and other categories established by order of the Minister of Internal Affairs, the Minister of Economy, Energy and the Environment and the Minister of Transport, Infrastructure and Communications, as the case may be, having the right to an increase of the salary in the amount of the indemnity granted, in case the other parent does not benefit from this right.

Allowance: The allowance for each day off shall be paid from the chapter corresponding to personnel costs in the employer's income and expenditure budget and shall amount to 75% of the basic salary

² The documents provided in points (i) - (iii) shall be submitted in the form provided by Order no. 389/2020 issued by the National Agency for Employment.



corresponding to one business day, but no more than the daily corresponding amount of 75% of the gross average salary used for the implementation of the State social security budget.

The fiscal facilities provided in the Fiscal Code granted to the natural persons who activate in the sector of constructions, respectively: (i) the income tax exemption; (ii) reduction of the share of health insurance contribution; and (iii) the exemption from the CASS payment **does not apply** during the state of alert regarding the allowances received for the supervision of children granted under Law 19/2020 on granting days off to parents to care for their children, in case educational establishments are temporarily closed.

People who, at the date of the establishment of the state of emergency, benefit from the leave and allowance for the care of the child with disabilities up to the age of 7 are guaranteed the rights related to this leave during the emergency included in the situation where the child has fulfilled or will turn 7 years old during this period.

Also, people who, at the date of establishing the state of emergency, benefit from the accommodation leave and the monthly allowance are assured the rights related to this leave during the entire state of emergency included in the situation when the maximum legal leave period has ended during this period of state of emergency.

The legal basis for the above is represented by *Law 19/2020 on awarding days off to parents to care for their children, in case educational establishments are temporarily closed, Emergency Ordinance no. 30/2020 amending and supplementing enactments, as well as introducing social protection measures in the context of the epidemiological situation caused by the spread of the SARS-CoV-2 coronavirus, Decision 217/2020 implementing the provisions of Law no. 19/2020 on awarding days off to parents to care for their children, in case educational establishments are temporarily closed, Emergency Ordinance 41/2020 amending and supplementing Law no. 19/2020 on awarding days off to parents to care for their children, in case educational establishments are temporarily closed and Emergency Ordinance 48/2020 regarding some financial-fiscal measures; Order no.389/2020 issued by the National Agency for Employment and Emergency Ordinance no. 59/2020; Law no. 55/2020 and Emergency Ordinance 70/2020 .*

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