

New forms of employment

Casual work, Romania

Case study 60: Policy analysis

Intermittent work, also known as day work or day labour, is common in Romania's agricultural sector, but new legislation extends permission to use this in other sectors, and gives such work a more formal character, providing some labour protection for day workers.

Introduction

This report analyses intermittent work or 'day work' in Romania. Intermittent work is understood as labour by the day, provided and contracted outside a regular working contract. It has been traditionally encountered in rural areas, in agriculture and related sectors, for seasonal activities, in the informal economy. It is also understood as a casual labour activity.

Casual work is regulated in Romania by Law 52/2011 regarding the exercise of activities with an occasional nature performed by day workers, published in the Official Journal No. 276 on 20 April 2011 in line with the country's commitments in the memorandum with the European Commission, under the Balance of Payments (BoP) assistance in conjunction with the International Monetary Fund (Stand-By Arrangement). Since then, it has been amended by Law No. 277/2013, published in the Official Journal No. 661 on 29 November 2013 and Law 18/2014 published in the Official Journal No. 192 on 19 March 2014, which came into force on 17 June 2014.

This analysis looks at the above laws, the evolution of day work as defined by the laws, and the outcomes and effects of the above legislation, as the definition of intermittent work or day work has changed with the various forms of the law. In the initial 2011 act, day work was not considered a labour relationship as such but, in the latest version of the law, this has been established as a proper working or employment relationship, albeit outside the Labour Code. Also, intermittent work or day labour was traditionally allowed only in economic sectors related to agriculture, but other sectors have been subsequently covered by the scope of the law.

The report draws upon information gathered through interviews with the main stakeholders, including regulatory institutions – the Ministry of Labour and the labour inspectorate, the Commission for Social Dialogue; representatives of beneficiaries, such as the International Advertising Association in Romania; and a trade union representative.

The secondary sources used for this analysis are the legal acts themselves, official public documents issued within the legislative process (initial legislative proposals, institutions' opinions on the proposals, minutes of parliamentary commission meetings) and reports issued by the institution in charge of monitoring the application of the legislation (annual reports of the labour inspectorate). This report is also complemented by findings from a case study on an advertising firm in Romania, carried out as part of this project – see case study 59 on Clock Advertising (Eurofound, 2015).

Background and objectives of the law on intermittent work in Romania

Structural reforms and the need to tackle undeclared work were agreed upon by the European Union and Romania in the first 'bail-out' Memorandum of Understanding in 2009, established to help Romania deal with the effects of the economic crisis, by increasing the intensity of controls of undeclared work. In 2010, the Romanian government, through Government Decision 1024/2010, approved a national strategy for reducing the incidence of undeclared work for the period 2010–2012 and an action plan for the implementation of the strategy. The action plan includes the 'adoption of normative acts to regulate the work of seasonal and day labourers'.

In subsequent memoranda with the European Commission, Romania also undertook to streamline flexicurity principles into labour legislation, to harmonise labour legislation with EU rules (for example, the regulations on temporary work) and, at the same time, to regulate actual labour relations not covered by the former Labour Code (such as fixed-term contracts), by adopting a new Labour Code.

The initiative of regulating seasonal or day work thus comes into the context of the reform of labour relations and the adoption of a new Labour Code.

However, the government chose to leave the regulation of labour by day or casual or intermittent work outside the new Labour Code. There were several different legislative initiatives at the time, among them a proposal from the Democratic Alliance of Hungarians in Romania. According to a representative of the labour inspectorate, the wish to regulate this type of work has been a preoccupation of institutions for a while, and they were looking at a similar piece of legislation in Hungary, regulating a similar type of labour (seasonal, occasional or intermittent work). In the end the different proposals were merged and the final parliamentary debate took place on the Legislative Proposal 'PL-x 737/2010 regarding the regulation of day labourers' working relations' tabled by the Hungarian Alliance.

The motivation accompanying this legislative proposal mentions the creation of a proper legal framework for casual/seasonal/occasional work and reduction of tax evasion as the law's main objectives. The legislation refers to intermittent work as work encountered in rural areas, performed by unskilled and uneducated workers, who have difficulty finding permanent jobs and who, usually, engage in informal economy activities. In addition to these objectives, the Ministry of Labour also intended to establish minimum legal requirements in terms of working conditions for intermittent or seasonal and occasional labour activities to protect day labourers who often worked in precarious jobs.

Intermittent or casual work is not defined in the initial version of Law 52/2011. The law of 2011, and its amendments in 2013, only stipulate that, by derogation from the provisions of the Labour Code (Law 53/2003), the law regulates the way day labourers may perform occasional activities, and that the relationship between a day labourer and an employer is established without a work contract in the sense given by the Labour Code.

In the 2014 amendment (by Law 18/2014), 'occasional activities' are defined as those activities performed randomly, sporadically or incidentally. More importantly, the law at the time of the analysis (April 2014) also specifies that these activities are regulated as a labour relationship. The new law also stipulates that the labour relationship between the two parties is established through an agreement of intent, without a written individual work contract.

The specific inclusion of such types of work as 'labour relationships' in Law 18/2014 was initiated by the Ministry of Labour at the request of the labour inspectorate. The inspectorate found the earlier versions of the law, which did not include any reference to casual work as a labour relationship, to be unfair to workers as they provided labour and received payment for which income tax was paid.

Apart from the formal debates organised by the Ministry of Labour through the Social Dialogue Commission, the legislative proposal triggered a series of reactions, especially from the trade unions. They argued against leaving intermittent or casual work outside the Labour Code. One line of argument against the law said the proposed legislation encouraged precariousness by excluding social protection and social security contributions for workers, and also by offering decreased labour protection and security as these were not obliged by the Labour Code. The other line of argument labelled the law as unconstitutional, as it contained specific provisions regarding the minimum and maximum hourly tariffs for intermittent work (so limiting the opportunity to negotiate a wage between the two parties involved in casual work). Moreover, the initial minimum payment set by the law was below the minimum wage, thus encouraging employers of intermittent workers to declare the lowest payment possible, in order to pay a smaller amount of the flat 16% tax on income involved.

The debate around the regulation of casual work also drew attention from other potential stakeholders, including the advertising industry, represented by the Romanian office of the International Advertising Association. The organisation supported the new regulation and advocated the inclusion of the advertising industry among sectors eligible to use this employment form.

The subsequent changes in the law came under the initiative of various members of parliament and the Ministry of Labour, at the request of the labour inspectorate, in 2013 and 2014. According to representative of the Ministry of Labour, the reasons behind the changes were the need to improve the legislation, as the first version of the law was not fully developed.

The representative also said that certain professional associations, such as those representing animal breeders or dock workers, asked, through their labour unions, for the removal of their activities from the list of sectors where intermittent work was allowed, as they feared this would lead to a fall in the number of regular employment contracts in these industries; hence the subsequent amendments of the sectors covered by the law.

Characteristics of intermittent work in Romania

According to the law, the parties involved in this type of labour relationship are the day labourer and the employer. In the initial version of the 2011 law, the eligible employers were limited to legal persons for whom the day labourer performs 'occasional activities' with occasional character. Through Law 277/2013, the number of potential employers was expanded to include physical persons, authorised individual employers, the self-employed and family enterprises. In Law 18/2014, however, physical persons can no longer be the employer in intermittent work, as individuals cannot fall under the economic sectors covered by the law.

In addition, the 2014 law specifies explicitly that public institutions cannot be employers of daily labour, except for carrying out certain public community services under the direct administration of local councils, such as working in green public spaces, greenhouses and zoos. (The list of public institutions that can use day labour have been expanded to include the Ministry of Youth and Sport for its hotels and accommodation facilities, sport clubs, and the Academy for Agricultural and Forestry Sciences for its research and development institutes and centres, through Government Emergency Ordinance 36/2014 published in the Official Journal no. 431 of 12 June 2014.)

Whereas, until 2013, Law 52/2011 specified nominal amounts for minimum and maximum hourly tariffs, as of 2014 the minimum hourly pay cannot be less than the gross guaranteed minimum wage and there is no limit to the maximum hourly tariff.

A flat-rate income tax of 16% applies to the gross sum received by the day labourers and no other taxes are due. Under Romanian tax law, the amount has to be paid by the employer. The law specifies expressly that no social contributions are due either by the worker or the employer. The

Ministry of Labour's main reason for excluding social contributions for this type of contract is the low level of pay for this type of work.

The law has kept, in all its versions, the provision stating that intermittent work cannot be performed for the benefit of a third party (article 4), in order to prevent workers being subcontracted to other employers.

The law sets the restriction of the daily maximum working hours at 12 hours per day. A day labourer cannot be hired for more than 90 days in one calendar year for intermittent work by the same employer. After 90 days an employment contract has to be offered. The Ministry of Labour believes that if employers need a worker for more than 90 days in one year then it is probably not labour of an occasional or incidental character, which was why this restriction was kept.

The minimum pay per day for intermittent work cannot be less than the amount for eight hours per day, even if the agreed number of hours is fewer than that.

Intermittent work is to be organised by the employer through a booklet or 'register, where workers and the hours worked must be recorded daily. The register, which employers can buy from the labour inspectorate, must be filled in before the start of intermittent work. The register contains cases where the gross and the net agreed payments are specified and, after being signed by the workers, serves as proof of payment for the work performed. Each month the employers must submit the details of the booklets to the regional labour inspectorates. Electronic submission of the details is now also allowed. The labour inspectorate has the obligation to centralise these registers and monitor the volumes of intermittent work.

Under the initial legislation, payment for intermittent work had to be made at the end of each working day; however, the changes introduced in 2013 and 2014 allowed payment at the end of a week or at the end date of the activity if there is a written agreement between the parties involved. Before 2014, payment had to be made in cash, but the changes introduced in 2014 allow any legal means of payment, including electronic payments.

In the 2011 version of the law, it was said that the employer had the obligation to train and inform the workers on the activity they were going to perform and about the risks and dangers of the activity, as well as the rights deriving from the law. This training has to take place daily, before the work starts. Employers also have to provide, at their own expense, equipment required for the work and any necessary protective gear. In 2013, a new legal provision required the employers to list the training provided to day labourers in a special file to record specific training provided to workers, as regulated by the specific labour health and security law. In 2014, the obligations of both the employers and workers were extended in this area. The workers now have to sign a declaration confirming that their health status allows them to perform the work they are engaging in.

The training and information on potential work risks must also take place when a working location changes. The employer must also register any accidents suffered by day labourers at work and report them to the regional labour inspectorate, which then investigates such events.

Intermittent workers are also obliged to learn and respect any prevention and protection measures established by the employer and to use the equipment provided correctly. Intermittent workers are also obliged to tell their employers about any situation that might be potentially dangerous to the workers' security and health, and to provide the labour inspectorate with all the information and documents requested. For working minors, the employer has to respect the respective legislation regarding minors' protection in the workplace.

The sectoral scope of the law regulating casual work has changed since the introduction of the 2011 legislation. As explained above, intermittent work was not explicitly regulated even though it was common in agriculture. The 2011 regulation included the sector as an area where intermittent work could be used. In addition, the Romanian Advertising Association successfully lobbied for the inclusion of the advertising sector and the related activities in the legislation. The

specific fields of activity or economic sectors where one could hire intermittent staff were: agriculture, hunting and fishing, forestry (excluding forestry exploitation), fishery and aquaculture, fruit-growing and viticulture, apiculture, animal breeding, the shows industry, cinema and audio-visual production, advertising, cultural events, merchandise handling, and cleaning and maintenance activities, and, as of 2013, cleaning and maintenance activities only in the fields previously mentioned.

The 2014 legislation, however, expanded the scope of intermittent work so that it is now permitted in the following sectors:

- agriculture, hunting and related services – with the exception of animal breeders in semi-wild, traditional or transhumance systems (moving livestock from one grazing ground to another in a seasonal cycle);
- forestry, with the exception of forestry exploitation;
- fishing and aquaculture;
- collection, treatment and elimination of non-hazardous waste;
- material recovery;
- retail of bulk agricultural products and livestock;
- organisation activities for exhibitions, fairs and congresses;
- advertising;
- artistic performance activities – shows, support activities for artistic performance, management activities of show venues;
- research and development activities in social and humanistic sciences (archaeological digging);
- activities performed in greenhouses, green spaces, zoological parks and gardens.

Employers had difficulty in determining precisely the activities where casual work may be used according to the law. This resulted in different interpretations and requests for clarification on how the law should be interpreted and applied in the various sectors. For example, it was not clear in the initial versions of the law whether the sectors covered described a type of activity that a day labourer can perform, or whether it referred to the employer's sector. After some consultation, a decision was made that the sectors defined above referred to the employers' sector of activity. Subsequently, the cleaning and maintenance services were dropped from the amended legislation, as it otherwise would have meant that all employers in this sector (that is, all cleaning companies, as opposed to just employers in the agricultural sector using intermittent work for cleaning services) could use this type of employment.

The same happened to merchandise handling. Even though the law implied that this activity could be performed for employers active in the sectors covered by the law (agriculture, forestry, fishing and so on), employers from other sectors such as retail started hiring day labourers. Through the influence of the trade unions, harbour and dock services were also excluded from the legislation.

The labour inspectorate is in charge of enforcing, controlling and monitoring the law on intermittent work. Secondary sources revealed numerous requests for clarification by employers addressed to different institutions – such as the Ministry of Labour –and communicated to members of parliament in their respective constituencies. Most questions relate to who can be an employer of day labour and what economic sectors are covered by the law, with such inquiries being redirected to the labour inspectorate.

In addition to answering requests for clarification, the labour inspectorate developed an information campaign, funded from its own state budget, in order to raise awareness on the existence of the law in 2011. At the time of the case study (April 2014) there were no funds

available for repeating this type of campaign in order to avoid the wave of requests for clarifications, but it is hoped their number will decrease as the 2014 version of the law is much clearer on issues regarding potential beneficiaries of day labour and economic sectors covered by the law.

The labour inspectorate offers assistance to employers who ask for it, on specific issues relating to the implementation of the law – such as the use of the day labourers' register or booklet, and labour protection in the workplace.

The budgetary cuts of 2010 have meant that labour inspectorate staff are not fully and properly trained in the application of the law, hence the increasing number of court cases in which employers challenge the labour inspectors' decisions to fine them. The case study revealed that this situation is prevalent in the advertising industry, which employs intermittent workers for advertising campaigns on behalf of their clients (other companies), a situation that is often interpreted by labour inspectors to be in breach of the Article 4 provisions, which state that day labour cannot be used for the benefit of a third party (Eurofound, 2015).

When asked about the possibility of clarifying the meaning of this article through a new amendment to the law, the Ministry of Labour representative admitted that it is preferable to get clarification through case law. No information is available on how many court cases there are, related to Law 52/2011.

One reason for the shortcomings in the area of monitoring and implementation of the law comes from the fact that the labour inspectorate, as an institution, is not eligible to benefit from the European Social Fund in Romania. This could have allowed them to recover from the budgetary cuts of 2009–2010, and to develop new awareness campaigns for workers, or information campaigns aimed at employers. These campaigns could have helped reduce the administrative burden in the area of control, which now takes up a considerable portion of the labour inspectorate's resources. The interviewed representative considered it would be more useful for the institution to be able to focus on prevention activities than on penalising violations.

The lack of resources means that statistics and information on the monitoring of effectiveness and satisfaction with the implementation of the law are not yet available.

Outcomes

The main objective of the legislation was to create a legal framework for a more flexible employment relationship and to reduce the incidence of undeclared work. These arguments were expressed by the Ministry of Labour representative and also the councillor from the Social Dialogue Commission.

Macro level

One of the effects of the law was the legalisation of a new type of labour relationship that has long existed in the labour market outside the Labour Code or in the informal economy. However, the use of intermittent workers cannot be considered as job creation in the traditional sense of the term, or as defined in the Labour Code, as this type of employment brings with it no social security rights and obligations, for either party involved, according to the trade union representative interviewed.

The labour inspectorate releases annual reports giving some details on the use of intermittent work. It must be noted that the level of detail has diminished from the first report released in 2011, to the last available one in 2013.

At the end of 2013, the labour inspectorate reported a total of 18,649 legal persons acquiring the register for intermittent work since May 2011, out of whom 14,071 sent a copy of it to the local labour inspectorate (this prompts speculation on the reasons for not sending copies of the

registers, with the most likely one being that, even though the register was acquired, the company did not use it). Analysis of the numbers in the reports shows a decrease in the annual number of legal persons acquiring the register for intermittent work since 2011 (showing at least an intention of using day labour at some point): there were 8,324 people in 2011, 5,762 in 2012 and 4,563 in 2013. The register can be acquired even if the legal person won't use it. If the company decides to use day labourers at some point, then it must use the register for recording day labour and send a copy of it each month to the territorial labour inspectorate.

The registers show a total of 10,874,942 intermittent work positions since May 2011, meaning a total number of days paid for as intermittent work, which include days performed by the same labourer, with the same employer or others in the same year.

At the same time, the number of annual registered daily positions for intermittent work has increased since 2011, totalling 2.34 million positions in 2011, 4 million positions in 2012 and about 4.5 million positions in 2013.

These positions were filled by just over 150,000 intermittent workers in 2011, over 340,000 workers in 2012 and 516,000 workers in 2013, showing an increase in the number of registered day labourers.

Taking into account, on one hand, the decrease in the number of legal persons acquiring the booklet (and even a lower number of copies sent to the Labour Inspection to declare the use of day labour) and, on the other hand, an increase in the number of total number of days paid and registered day labourers, it seems that new positions for day labour are available with the same number of companies.

The fields of activity with most intermittent work positions recorded in 2012 were agriculture (28.73%), fruit-growing and viticulture (17.32%) and forestry (13.06%), while the entertainment and advertising industry accounted for 4.16% of all recorded intermittent work positions. The spread of day labour by economic sector for 2012 is similar to the previous years. There are no data on the use of intermittent work in the different sectors of activity in the 2013 report.

Tax revenues from income generated by intermittent work are not monitored, although the law stipulates that 16% of the amount paid to the workers is due as income tax. Even though the low pay for day labour does not translate into considerable amounts of tax, it is still a source of income to the state budget that did not exist before Law 52/2011 came into force.

While the proponents of the law, such as the interviewed representative of the International Advertising Association, consider it as a way of bringing in more revenues to the budget, the trade unions tend to think of intermittent work as a form of 'legalised tax evasion', because the 16% income tax is lower than taxes related to standard employment. The labour union representative interviewed believed that the revenues created would not even be enough to cover the operational costs of the labour inspectorate in monitoring the implementation of the law.

Micro level

In certain industries, the adoption of the law translated into increased competitiveness for certain companies or employers, given the reduced labour costs and the simplified employment procedures. From the employer's point of view, this legislation helped organisations in sectors covered by the regulation to bring existing labour relationships into the formal economy, or to reduce costs for certain positions, which now did not require the social contribution costs associated with a regular working contract. This has been the case with the advertising industry, included under the scope of the law since 2011 following their lobbying efforts. This industry had a constant need for short-term workers to meet their clients' advertising needs and budgets. The 'below the line' sector (which concentrates on direct marketing) had already used this type of work for leafleting, sampling and in-store promotions. Such agencies complained of having to bear the burden of signing and terminating working contracts, with all the associated bureaucracy

and social protection costs, even though they needed to employ workers for only a few days in any given month. In addition, some of the agencies were actually using intermittent work, as the advertising budgets offered by their clients would not cover the costs of proper employment. This meant that some agencies were dumping costs for the labour used in their campaigns. Therefore, for certain agencies, the law reduced the risk of being fined for using undeclared labour while, for others, it meant reduced labour costs, as they were no longer forced to offer working contracts to their short-term staff.

While the regulation, as such, has not changed much for the day labourers who were already working on such intermittent arrangements, it is difficult to separate the outcomes from the legislation in vigour versus de facto intermittent work (which was happening before the regulation came into force). The legislation has, however, introduced provisions aimed at protecting the workers: there is a limit on the number of hours per shift, as well as on the number of days one intermittent worker can work with the same employer, to encourage employers to offer such staff a contract and pay that corresponds to at least the gross minimum wage. Considering the limited resources of the labour inspectorate, these cases are not easy to monitor and can lead to infringements of the law (not declaring all hours of work, days or payment), with negative consequences for both employers (stress, fines) and workers (stress).

For example, the law does not provide a means of enforcement or control for the workers to make sure they get paid. Workers can legally agree to being paid after one week or at the end of their activity but, in the absence of a proper employment contract, it is the workers' responsibility to make sure that payment is actually made. The labour inspectorate representative confirmed that it is very difficult to enforce the law in this area. However, if the intermittent workers can prove they worked (no details are offered on how such proof can be produced) and no payment was made for their work, the labour inspectorate is willing and has the competence to intervene on their behalf.

In addition, the law does not provide guidelines on work organisation, as this would be too specific for each sector of activity, so the tasks performed by intermittent workers are organised by the employers, according to their own needs. The law makes no reference to issues such as:

- workers' access to information;
- organisation in works councils;
- non-discrimination compared with core staff;
- bonus payments, notice periods or severance pay.

There is a reference to the employers' obligation to inform the day labourers about the activity to be performed, as well as their rights and obligations. However, the only workers' right made explicit in the law is that to remuneration for work performed. Their other rights, as related to payment conditions, working hours and safety in the workplace, appear under employer's obligations. For workers, Law 18/2014 has, however, made a contribution to increased safety at work. With each version of the law, there were more and stricter provisions regarding labour protection and labour and health security. These provisions were especially important because the law often addresses low-skilled or unqualified workers who might work in precarious jobs. The degree of enforcement of such provisions depends very much on the capacity of the labour inspectorate to perform its monitoring duties in this area. The latest provisions referring to work accidents and death were introduced at the request of the Ministry of Labour and the labour inspectorate. Now the latter can investigate work accidents and decide on the employer's liability.

On the other hand, when it comes to social rights normally associated with a regular employment contract (such as sickness or severance pay), because the law provides for a simplified form of a labour relationship, the regulation does very little for them. Workers cannot benefit from social or unemployment benefits or healthcare unless they voluntarily made a contribution to these social

protection schemes. There is no information on how often or how many of them chose to contribute to these schemes, but it is assumed that most decide not to, considering the low levels of payment and the general low levels of education on social protection among day labourers, who are unaware of the consequences of such a decision in the longer term.

In addition, intermittent workers have no job or income security or stability. Also, because of the lack of work security and low levels of pay, stress levels are quite high among day labourers, as the case study shows (Eurofound, 2015).

The trade unions fear that, with the inclusion of new sectors of activity in the new legislation, potential employers might prefer daily labour or casual work to other, more traditional forms of employment regulated by the Labour Code. This might lead to a decreased use of employment contracts, resulting in smaller contributions to the social security system and, in the longer term, more people in need of social assistance. While there is no information about the drop in numbers of employment contracts in the industries under the scope of the law, the adoption of the law on intermittent work did lead to the termination of existing regular working contracts for short-term staff in the BTL sector of the advertising industry.

Considering that the initial intention was to create a legal framework for an existing labour relationship and to collect tax revenues from such an activity, the objectives have been partially met.

Strengths and weaknesses of Law 52/2011

Strengths for employers

The main strength of the law is that it allows for a simplified employment procedure, which was extremely important for the economic sectors covered by the law. In addition, considering there are no social protection costs associated with this type of employment, the law led to reduced labour costs for employers.

Weaknesses for employers

From the employers' perspective, the main shortcoming or weakness of the law relates to the sectors in which intermittent work can be used. It has been now clarified, with the latest version of the law, that the list of sectors mentioned by the law concern employers' area of activity. The unclear formulation of the early legislation caused confusion among employers and contributed to some negative perceptions on intermittent work.

The other shortcoming is related to Article 4 of the law, which states that intermittent work cannot be performed for the benefit of a third party, thus giving rise to arguments over who can use intermittent work and how. This was particularly the case with the advertising industry in the case study, where agencies use intermittent staff in campaigns they run for their clients. They denied the labour inspectorate's claim that the agency employs staff for the benefit of a third party (which is forbidden by the law). This will, however, be clarified in impending court cases between agencies and the labour inspectorate. The court decision will then be considered the proper and official interpretation of the law, according to the Ministry of Labour representative. It was not the Ministry of Labour's intention to cause difficulties in the industry, but to prevent a form of 'subcontracting' of workers, which is encountered in rural areas. In addition, all sectors should be treated equally by the regulation in question.

Employers also consider that the law could have directly specified a daily tariff instead of an hourly one, as no payment worth less than a full day is allowed.

Strengths for workers

As far as workers are concerned, the law has allowed certain categories, such as agricultural workers, to legalise an existing labour relationship. Even if not all rights associated with a traditional employment contract are carried within the new law, it allows workers to find some sort of employment and establish it under certain rules, as opposed to having no rules whatever regulating such a labour relationship. The law provides for a minimum and maximum number of working hours.

Also, according to the 2014 version of the law, the workers are at least entitled to payment that is equal to the gross minimum wage. They are also entitled to labour protection in the workplace.

Weaknesses for workers

Intermittent workers do not have the right framework and the means to address aspects of the law that might affect them negatively. According to the Ministry of Labour, they could not consult with intermittent workers, as they were not organised into a structure capable of sustaining an institutional dialogue.

For the short-term staff in the advertising industry, the new law triggered the disappearance of proper employment contracts.

According to the labour union representative interviewed, the regulation provides a legal means of bypassing proper employment contract regulations and using cheap labour. The unions are in favour of having the law repealed. According to them, the labour inspectorate's capacity to control the implementation of the law is weak.

The trade union representative pointed out that the day labourers' booklet or register is no guarantee that employers will not break the law: there is no way of knowing if an intermittent worker and the employer are actually signing the booklet daily or if they are really writing down all the days used for intermittent work. The worker and the employer can still agree on more days than the actual days written in the register and thus pay less income tax or not respect the maximum number of 90 days labour a year for a single employer. There are no ways of finding out if other payments are being made to the intermittent worker, outside those in the register. The labour inspectorate representative agreed, adding that they needed the full cooperation of the employer and of the workers to perform their monitoring activities.

Transferability

In Romania, any legislation concerning intermittent work has to go through the relevant parliamentary procedure for its adoption. The degree of transferability of such an instrument depends very much on the specificity of each country's parliamentary procedure. The procedure is not necessarily a smooth process in Romania and it requires a lot of political will to be implemented. The contents of the law also depend heavily on the parties that are in a parliamentary majority at that time.

Commentary

The law has some merits, as it regulates an existing type of employment, and can be considered to be contributing to the legalisation of some of the work in the informal economy.

The Ministry of Labour and the labour inspectorate are constantly monitoring the application of the law. Whereas the first version of the law was not fully developed, its adoption produced important consequences in the labour market, prompting decision-makers to improve it and better protect affected workers and their right to at least minimum wage earnings. The labour inspectorate is the sole public institution that has direct experience of the negative effects this form of work may produce for intermittent workers. The Ministry of Labour, on the other hand, is

mainly in contact with employer representatives, in the absence of an organisational structure representing the intermittent workers.

The decision-makers were very responsive to queries from employers of intermittent work. A more accurate assessment on the longer-term effects produced by the law should look further into the following aspects:

- transition of intermittent workers into proper employment, which would offer them social security coverage (currently, there are no data on this);
- establishing whether intermittent work affects the incidence of regular employment contracts in the sectors concerned;
- analysing in detail how this type of employment affects the minimum guaranteed income and social benefits;
- the socio-economic status of intermittent workers (purchasing power, quality of life, professional development and so on) in the different sectors covered by the law.

Regulating intermittent work cannot equal job creation. Employment as an intermittent worker is not the same as employment regulated through a traditional employment contract, listing all the rights and obligations for the parties involved.

Moreover, intermittent work, as such, is not supporting or contributing to the current public social protection systems in the same way as regular employment contracts do, hence it cannot be taken into consideration as a means for supporting such systems, which have been hit hard by the recent economic crisis and the resulting budgetary cuts.

Considering the numerous changes made since the adoption of the law in 2011, initiated by both members of parliament and the government, one may conclude that the tool chosen for the regulation of intermittent work (ordinary law) is flexible enough to cope with new needs that arise. Law 52/2011 has been subject to a constant process of amendment. Members of parliament and the government have been very responsive to representations by those with an interest in the law (mainly employers) and also from the labour inspectorate. This shows a high degree of interest in the regulation of intermittent work and in this type of simplified labour relation. Bearing in mind that, in general, it is not easy to get any law adopted in the Romanian parliament, there was enough political will to adopt and improve the legislation on intermittent work. This, however, would not have been more difficult to achieve if it was not for the bail-out Memoranda of Understanding that Romania signed with the European Union and the International Monetary Fund.

Information sources

Websites

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