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Legal Fresh – Up to Date

THE PAYMENT OF SEVERAL TYPES OF INDEMNITIES IN THE CONTEXT OF THE COVID – 19 PANDEMIC

1. Relevant legislation

- *Government emergency ordinance no. 30/2020 for amending and completing of some legal acts, as well as establishing some measures in the sector of social protection in the context of the epidemiologic situation determined by the spread of the coronavirus SARS-CoV-2 (hereinafter referred to as GEO 30/2020);*
- *Government emergency ordinance no. 32/2020 for the amending and completing of the Government emergency ordinance no. 30/2020 for the amending and completing of some legal acts, as well as for establishing measures in the sector of social protection in the context of the epidemiologic situation determined by the spread of the coronavirus SARS-CoV-2 and for establishing of supplementary measures of social protection (hereinafter referred to as GEO 32/2020);*
- *The Labor Code (Law no. 53/2003);*
- *Order no. 740/2020 of the Ministry of Labor and Social Protection for the approval of the draft of the documents regulated by article XV paragraph (1) of the Government emergency ordinance no. 30/2020 for amending and completing of some legal acts, as well as establishing some measures in the sector of social protection in the context of the epidemiologic situation determined by the spread of the coronavirus SARS-CoV-2, with the amendments and completions adopted by the Government emergency ordinance no. 32/2020 for the amending and completing of the Government emergency ordinance no. 30/2020 for the amending and completing of some legal acts, as well as for establishing measures in the sector of social protection in the context of the epidemiologic situation determined by the spread of the coronavirus SARS-CoV-2 and for establishing of supplementary measures of social protection (hereinafter referred to as Order 740/2020);*
- *Order no. 741/2020 of the Ministry of Labor and Social Protection for the approval of the drafts of the documents regulated by article XII paragraph (1) of the Government emergency ordinance no. 30/2020 for amending and completing of some legal acts, as well as establishing some measures in the sector of social protection in the context of the epidemiologic situation determined by the spread of the coronavirus SARS-CoV-2,*



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with the amendments and completions adopted by the Government emergency Ordinance no. 32/2020 for the amending and completing of the Government emergency ordinance no. 30/2020 for the amending and completing of some legal acts, as well as for establishing measures in the sector of social protection in the context of the epidemiologic situation determined by the spread of the coronavirus SARS-CoV-2 and for establishing of supplementary measures of social protection (hereinafter referred to as Order 741/2020);

- *Order no. 742/2020 of the Ministry of Labor and Social Protection for the approval of the drafts of the documents regulated by art. XV paragraph (2) of the Government emergency ordinance no. 30/2020 for amending and completing of some legal acts, as well as establishing some measures in the sector of social protection in the context of the epidemiologic situation determined by the spread of the coronavirus SARS-CoV-2, with amendments and completions adopted by the Government emergency ordinance no. 32/2020 for the amending and completing of the Government emergency ordinance no. 30/2020 for the amending and completing of some legal acts, as well as for establishing measures in the sector of social protection in the context of the epidemiologic situation determined by the spread of the coronavirus SARS-CoV-2 and for establishing of supplementary measures of social protection (hereinafter referred to as Order 742/2020);*
- *Order no. 742/2020 of the Ministry of Labor and Social Protection for the approval of the drafts of the documents regulated by art. XV paragraph (4) of the Government emergency ordinance no. 30/2020 for amending and completing of some legal acts, as well as establishing some measures in the sector of social protection in the context of the epidemiologic situation determined by the spread of the coronavirus SARS-CoV-2, with the amendments and completions adopted by the Government emergency ordinance no. 32/2020 for the amending and completing of the Government emergency ordinance no. 30/2020 for the amending and completing of some legal acts, as well as for establishing measures in the sector of social protection in the context of the epidemiologic situation determined by the spread of the coronavirus SARS-CoV-2 and for establishing of supplementary measures of social protection (hereinafter referred to as Order 743/2020).*



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2. The payment of the indemnity for technical unemployment in the context of the COVID-19 pandemic

One of the measures that can be adopted by employers during these times is technical unemployment. During the state of emergency, **for the period during which the individual labor contract of the employees are suspended at the initiative of the employer due to the effects of the COVID-19 pandemic, the affected employees benefit from an indemnity supported by the unemployment insurance budget, under certain conditions.**

2.1 The amount of the technical unemployment indemnity and the payment of the indemnity

According to the provisions of art. 53 para. (1) of the Labor Code, the technical unemployment indemnity is established by the employer and needs to be at least 75% of the basis salary corresponding to the job occupied by the employee and is paid by the employer from the employer's salary fund.

However, in order to minimize the financial difficulties generated in the context of the COVID-19 pandemic, the Government has established derogatory regulations regarding the technical unemployment indemnity. According to art. XI, para. (1) of GEO 30/2020, during the state of emergency established by Decree no. 195/2020, *"for the period of temporary suspension of the individual employment contract, at the initiative of the employer, according to art. 52 paragraph (1) pct. c) of Law no. 53/2003 - The Labor Code, republished, with the subsequent modifications and completions, as a result of the effects produced by the SARS-CoV-2 coronavirus, the indemnities that the employees receive are set at 75% of the basis salary corresponding to the job occupied and are supported from the unemployment insurance budget, but no more than 75% of the gross average salary stipulated by Law no. 6/2020 of the social insurance state budget for 2020."*

However, the regulation is not unequivocal, not being, at least in the original form of GEO 30/2020, very clear if the indemnity itself is limited to 75% of the average gross salary or if it continues to be at least 75% of the basis salary corresponding to the job occupied, but an amount equal to maximum 75% of the average gross salary is borne from the unemployment insurance budget. The legal text has consequently provoked a series of discussions.



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In our opinion, without excluding, as we said, other interpretations, during the state of emergency established on the territory of Romania, **the technical unemployment indemnity to which the employee is entitled is set at 75% of the basis salary corresponding to the job occupied, but no more than 75% of the average gross salary for 2020, amount which is set at 5,429 RON. The payment of the indemnity is supported by the unemployment insurance budget.**

This interpretation appears to us even more obvious as, through a recent legislative amendment, it was established that, if the basis salary of the employee entered into technical unemployment is higher than the average gross salary - the employee having the right to a compensation of only 75 % of the gross average salary -, the employer can, in case the budget for the payment of personnel expenses allows it, bear the difference between the amount representing the indemnity to which the employee would be entitled under ordinary conditions, respectively the one regulated by art. 53, para. (1) of the Labor Code, and the amount representing 75% of the gross average salary. The wording of the legal text that states that the indemnity "*can be supplemented by the employer*" - art. XI, para. (11) of GEO 30/2020 - supports the idea that, by derogation from the provisions of art. 53, para. (1) of the Labor Code, the employer has only the right, and not the obligation, to bear this difference.

From a fiscal point of view, **the indemnity is subject to the payment of income tax and compulsory social contributions, respectively CAS and CASS, the work insurance contribution not being owed.** The calculation, withholding and payment of tax and contributions will be made by the employer from the indemnities received from the unemployment insurance budget. The term for the payment and declaration of the fiscal obligations is the 25th of the month following the month in which the payment is made from the unemployment insurance budget.

The period during which these technical unemployment indemnities are paid from the unemployment insurance budget is limited to the duration of the state of emergency, but, in any case, only during the temporary suspension of the individual employment contract.

2.2 The beneficiaries of the payment of the compensation from the unemployment insurance budget



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Employees whose employers have reduced or temporarily interrupted their activity, totally or partially, as a result of the effects of the COVID-19 pandemic, benefit from this measure during the declared state of emergency.

Therefore, as a result of recent legislative amendments, the measure no longer entails holding the certificate for emergency situations or the existence of a decrease in the revenues with a certain minimum percentage, while the limitation of granting the facility for maximum 75% of the employees in the case of certain categories of employers is also eliminated.

At the same time, in the context of this measure, it was also established that, in the case of an employee having several individual labor contracts, out of which at least one full-time contract is active during the declared state of emergency, he/she does not benefit from the technical unemployment indemnity. On the other hand, if all contracts are suspended as a result of the establishment of the state of emergency, the employee benefits from the compensation related to the individual labor contract with the most advantageous salary rights.

2.3 The conditions that need to be met in order to benefit from this measure

In order to obtain this facility, employers must submit the following documents:

- a request signed and dated by the legal representative;
- an affidavit;
- the list of employees receiving the technical unemployment indemnity, signed by the legal representative of the employer.

These documents will be drafted according to the models approved by Order 741/2020 and can be downloaded from the website <https://www.anofm.ro/>.

As mentioned above, it is not necessary to have a certificate for emergency situation. Employers take responsibility for the accuracy and truthfulness of the data entered in the documents presented above, bearing the legal consequences for any false statements.

The documentation is sent by the employer, via e-mail, to the county employment agencies, or the one of the municipality of Bucharest, within the radius of which they have their



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registered office, to the dedicated e-mail address, following the format county@anofm.gov.ro (example sibiu@anofm.gov.ro). The documents can also be sent through the platform <https://aici.gov.ro/home>.

Applications need to be submitted, along with the documentation mentioned above, in the current month for the payment of the indemnity for the previous month. Thus, starting with the 1st of April 2020, employers shall send the documents related to indemnities paid in March 2020.

The indemnities will be paid to the employer within maximum 15 days starting from the moment of the submission of the documents. After receiving the payment, the employer shall pay the employee's indemnity within 3 working days from the receipt of the sums of money.

These provisions apply to employees with an individual labor contract.

3. Payment of indemnities for the benefit of other persons, other than the employees in technical unemployment

In order to support persons who obtain income from other sources than salaries, **the Government regulated the possibility of granting indemnities to other categories of beneficiaries**, for the period of the declared state of emergency.

3.1 The categories of beneficiaries. The amount of the indemnities

Under conditions similar to those stated above, but not identical, the following categories of persons may benefit from indemnities:

<ul style="list-style-type: none">• other professionals, as regulated by law, as well as persons who have concluded individual labor agreements based on Law no. 1/2005 regarding the	<ul style="list-style-type: none">• benefit from a monthly indemnity, supported by the state budget, of 75% of the gross average salary (meaning 4,071.25 RON);	<ul style="list-style-type: none">• on the basis of documents whose models were approved by the Order 740/2020;
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organization and functioning of a Co-operative, that interrupted their activity due to the effects of the SARS-CoV-2 coronavirus;	<ul style="list-style-type: none">• during the state of emergency;	
<ul style="list-style-type: none">• athletes, coaches, doctors, nurses, masseurs, physiotherapists and researchers, participants in the sports activity, whose contracts for sport activity are temporarily suspended, at the initiative of the sports structure, due to the effects produced by the SARS-CoV-2 coronavirus;	<ul style="list-style-type: none">• benefit from an indemnity, supported by the state budget, of 75% of the monetary rights related to the sport activity, but not more than 75% of the average gross salary (meaning at most 4,071.25 RON), with the possibility of negotiating and jointly agreeing upon other compensatory indemnities granted by the sports structure;• during the state of emergency, for the period of temporary suspension of the contract for sport activity;	<ul style="list-style-type: none">• on the basis of documents whose models were approved by the Order 742/2020;
<ul style="list-style-type: none">• natural persons that obtain income exclusively from copyrights and other related rights, who interrupted their activity as a result of the effects of the COVID-19 coronavirus;	<ul style="list-style-type: none">• benefit from a monthly indemnity, supported by the state budget, of 75% of the gross average salary (meaning 4,071.25 RON);	<ul style="list-style-type: none">• on the basis of documents whose models were approved by the Order 743/2020.



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	<ul style="list-style-type: none">• during the state of emergency;	
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These indemnities are subject to taxation and payment of social insurance and health social insurance contributions. The tax obligations regarding their calculation, declaration and payment are established by common order of the Minister of Labor and Social Protection and the Minister of Public Finance.

3.2 How can this facility be accessed? How is the payment made?

In order to access this facility, the beneficiaries, other than those who have signed contracts for sport activity, must submit a request accompanied by the copy of their identity card, the copy of the statement of account and an affidavit.

In addition, natural persons that obtain income exclusively from copyrights and other related rights must also attach a copy of the contract of copyrights and other related rights for the last 3 months prior to the establishment of the state of emergency.

In the case of the beneficiaries that have concluded contracts for sport activity, the sport structures will submit:

- a request signed and dated by the legal representative;
- an affidavit;
- the list of participants for which the sport activity was suspended.

In these cases, the applications are formulated and transmitted, along with the documentation mentioned above, by e-mail, to the agencies for payments and social inspection of the county, respectively of the municipality of Bucharest, **until the 10th of the current month for the payment of the indemnity for the previous month.**

The payment of the indemnities is made within 10 days from the submission of the documents, directly to the beneficiaries, except for the indemnity granted to the persons who have concluded contracts for sport activity, which will be paid to the sport structures that will then make the payment to the beneficiaries.



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It should be noted that the specific way of determining the indemnity for these categories of persons is also applicable to the personnel contracted through any other method, provided by law, other than through an individual labor contract.

** This material contains the data and information updated until the 13th of April 2020. Given the exceptional situation, new measures and procedures are constantly being adopted, the process being very dynamic.*

This informative note presents the general legal framework in the matter, without claims of exhaustiveness on the subject. The ideas presented are strictly informative and do not eliminate the need to analyze the legal provisions set out, nor the need for legal advice offered by a lawyer, being no substitute for them in a specific case.