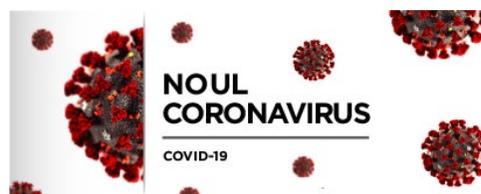


## FEASIBLE LEGAL SOLUTIONS FOR EMPLOYERS AND EMPLOYEES DURING THE STATE OF EMERGENCY

On 17 March 2020 the Parliament for the first time [declared](#) the state of emergency throughout the entire territory of the Republic of Moldova until 15 May 2020.



This measure was preceded by several decisions of the National Extraordinary Public Health Commission ("NEPHC"), which instituted several preventive measures and emergency-related restrictions. At the same time, with the appointment of the state of emergency, the Parliament decided to grant additional empowerments to the Exceptional Situations Commission ("ESC"), which has put in place and continues to put in place more preventive measures and restrictions applicable throughout the country (all decisions of the NEPHC and the ESC can be accessed [here](#)).

In this context, employers carrying out different kinds of economic activities (whether or not they have been suspended) face many difficulties and are forced to reduce or even interrupt their activities, which can clearly result in their failure to pay the salaries.

In order to mitigate the effects of the COVID-19 pandemic, effects which may alter the relations between employers and employees, we present below some legal solutions and feasible measures that can be taken into account by employers and employees.

### 1. **Work at home** (Article 290 et seq. of the Labor Code):

The use of work at home regime is recommended for economical agents whose activity (i) has not been suspended by the decision of the ESC, NEPHC or other competent authorities, and (ii) allows the employees to carry out work from their own premises (e.g. consultancy, translation, software development, provision of most services that do not involve personal contact).

#### ➤ *What documents are to be perfected in order to introduce the work at home regime?*

Where the individual employment agreement ("IEA") concluded with the employee does not regulate the right to provide the work from home, the employer and the employee shall conclude an additional agreement to the IEA (in simple written form) which shall provide: (i) the determination of the work at home regime, (ii) the manner in which the employer shall make available to the employee the materials, tools and mechanisms necessary for the performance of the work (e.g. computer, mobile phone), (iii) where the employee uses personal equipment - the way in which compensation for wear is paid and (iv) the manner of compensation for other expenses related to the provision of work from home.

We also recommend that, through the additional agreement to the IEA, the parties shall regulate some organizational aspects, such as: rules for keeping track of the working time (Article 106 of the Labor Code), the way in which control over the employee's activity is exercised, specific rules for the use of information technologies, etc.

#### ➤ *For what period can we apply the work at home regime?*

This regime is applicable for an unlimited period of time and its duration can be regulated by the additional agreement to the IEA.

#### ➤ *What is the salary to be paid to the employees?*

Employers shall pay the same salary initially determined by the IEA, unless otherwise agreed by the additional agreement to the IEA (e.g. establishment of work at home regime in parallel with a part-time working regime – see point 2 below).

#### ➤ *Can we apply the work at home regime only to a part of the employees?*

Yes, this regime can also be applied in relation to one or a few employees.

- *What additional rights and obligations do the employer and the employee have in case of applying the work at home regime?*

The employer shall approve, through an order, an instruction concerning safety and health at work in case of the work at home regime, which shall be notified to the employee, under signature.

## 2. **Part-time working** (Article 97 of the Labor Code):

The use of part-time work regime is recommended for economical agents for whom: (i) the activity has not been suspended by the decision of the ESC, NEPHC or other competent authorities; (ii) the workload has decreased considerably.

- *What documents are to be perfected in order to introduce the part-time work regime?*

The employer and the employee are to conclude an additional agreement to the IEA (in simple written form) which shall provide: (i) the part-time work regime (e.g. 2/4/6 hours per day) and (ii) the conditions of work's remuneration for the part-time work regime period.

At the same time, we recommend that with the additional agreement to the IEA the parties to regulate other aspects, such as: the non-application of any supplements, prizes or of other material aid throughout the validity of the additional agreement to the IEA, the periodicity of payments (if this will be different than the one initially established), etc.

Together with or separately from part-time working, the parties may establish in the additional agreement to the IEA also individualized work schedules, with a flexible working time regime (Article 100, para. (7) of the Labor Code). There is no need of an additional agreement to the IEA (but anyway there is a need of employee's written consent) if the possibility of establishing individualized work schedules is provided by employer's internal regulations or by the collective agreement.

- *For what period can we apply the part-time work regime?*

This regime is applicable for an unlimited period of time and its duration can be regulated by the additional agreement to the IEA.

- *What is the salary to be paid to the employees?*

Employers shall pay the salary established by the additional agreement to the IEA. This salary can be lower than the guaranteed minimum salary in the real sector (MDL 2,775 per month calculated for a full work schedule of an average of 169 hours per month), provided that the minimum amount per hour is followed (MDL 16,42 per hour).

- *Can we apply the part-time work regime only to a part of the employees?*

Yes, this regime can also be applied in relation to one or a few employees.

- *What additional rights and obligations do the employer and the employee have in case of applying the part-time work regime?*

The Labor Code does not provide any specific rights or obligations.

## 3. **Technical unemployment** (Article 80 of the Labor Code):

Technical unemployment represents the temporary impossibility of continuing the production activity by the employer or an internal subdivision of the employer (subsidiary, directorate/section/department, store, warehouse/hall, etc.) considering objective economic reasons.

Depending on whether or not the employees agree to the technical unemployment regime of the employer, there will be different legal requirements, as described below.

- The use of the technical unemployment regime is recommended for economical agents for which:
- a) the activity has been discontinued by the decision of the ESC, NEPHC or other competent authorities; or
  - b) the activity has not been discontinued, but there are objective economic reasons which triggers the right to apply the technical unemployment (e.g. workload (sales) has decreased considerably).

The technical unemployment is applicable in all areas, not only for employers with the activity of goods' production, despite the appearance of limited application of the concept of "production activity".

➤ *What documents are to be perfected in order to apply the technical unemployment?*

The employer shall issue an order (resolution, disposition, decision) on the establishment of technical unemployment, that shall be notified to the affected employees and which shall regulate: (i) the period of technical unemployment, (ii) the manner in which the employees will perform their obligation to be available to the employer, (iii) the amount of the allowance that shall be paid to the employees during the technical unemployment period (unless additional agreements on suspension of the IEA are concluded) and (iv) the subdivisions affected by the establishment of technical unemployment (or the indication that technical unemployment will apply for all the employees).

If the employee agrees to suspend the IEA throughout the period of technical unemployment, the employer and the employee shall conclude an additional agreement to suspend the IEA (in written form) on the grounds of technical unemployment which shall regulate (at least): (i) suspension of the employee's work and of the payment of salary rights (salary, bonuses, other payments) by the employer and (ii) the period of suspension of the IEA.

➤ *For what period can we apply the technical unemployment regime?*

The technical unemployment cannot exceed 4 months during one calendar year.

➤ *What is the salary to be paid to the employees?*

During the technical unemployment period:

- (i) the employer does not pay any salary payments to employees who have concluded additional agreements on the suspension of the IEA;
- (ii) in the case of employees who have not concluded an additional agreement to suspend the IEA - the employer shall pay an allowance which shall not be less than 50% of the employees' basic salary.

➤ *Can we apply the technical unemployment regime only to a part of the employees?*

The technical unemployment may be applied to all the employees or to one or more internal subdivisions of the employer. Respectively, the technical unemployment regime cannot be applied to a single employee.

➤ *What additional rights and obligations do the employer and the employee have in case of applying the technical unemployment regime?*

During technical unemployment period, the employees shall be available to the employer in the manner determined by the employer with its order on establishing technical unemployment. The employer is entitled to order the resumption of its activity at any time. In such case, the employer shall issue an order for the resumption of the work activity, which shall be notified to the employee under signature, at the latest on the date of the resumption of the work activity.

In the event of suspension of the IEA on grounds of technical unemployment, the rights and obligations of both parties (apart from the obligation of the employee to perform the work and the employer's obligation to pay the salary payments) continue to exist if, by the legislation in force, the collective agreements, the collective and individual employment agreements is not provided otherwise.

**4. Suspension of the IEA for quarantine reasons** (Article 76 para. d) of the Labor Code):

Quarantine, according to Article 2 of the Law No. 10/2009 on state surveillance of public health, is the restriction of movement, isolation and/or separation from other persons of the persons suspected to be infected but not sick, or of luggage, containers, means of transport or goods suspected to be contaminated in a manner which prevents the eventual spread of the infection or contamination.

Quarantine measures shall be introduced, suspended or canceled by:

- (a) the Government, at national level and at the territorial-administrative units, based on proposals from the Ministry of Health, Labor and Social Protection, or
- (b) the local public administration authorities, at locality or community level, on the basis of proposals from the competent authorities for public health surveillance.

During the state of emergency period, quarantine measures may also be imposed by the ESC (e.g. by para. 29 of the Resolution No. 10 dated 31 March 2020 was introduced the quarantine regime in Soroca municipality, Stefan Voda city and Carahasani village, Stefan Voda district).

The IEA shall be suspended, by law (but with the obligation of issuance of the employer's order) in the case of:

- (i) the employees were quarantined by medical institutions or who have their place of living in an administrative-territorial unit where the quarantine measure was introduced (provided by the decision of ESC or NEPHC at central or local level); or
- (ii) all the employees of an economical agents which is located in an administrative-territorial unit where the quarantine measure was introduced (provided by the decision of ESC or NEPHC at central or local level).

➤ *What documents are to be perfected in order to suspend the IEA for quarantine reasons?*

The employer shall issue an order (resolution, disposition, decision) on suspension of the IEA, which shall be notified to the employee under signature, at the latest on the date of suspension.

➤ *For what period can we apply the suspension of the IEA?*

The suspension of the IEA for quarantine reasons shall be applicable during the entire quarantine period (determined in accordance with decision of the medical institutions, ESC or NEPHC, as the case may be). After the annulment of the quarantine by the competent authorities, the employer shall issue an order (resolution, disposition, decision) on the resumption of work activity, which shall be notified to the employee under signature, at the latest on the date of the resumption of the work activity.

➤ *What is the salary to be paid to the employees?*

The employers shall not pay salaries for the entire IEA's suspension period.

Note that under the Law No. 289/2004 on allowances for temporary incapacity for work and other social insurance benefits, insured persons by the public social security system are entitled to an allowance for illness prevention (quarantine). The quarantine allowance shall be granted to the insured person who is prohibited to continue his/her activity because of the quarantine for a period determined by the certificate of sick leave issued in accordance with the legislation.

➤ *Can we apply the suspension of the IEA for quarantine reasons only to a part of the employees?*

Yes, this measure may be applied only in relation to the employees who are in the quarantine regime.

➤ *What additional rights and obligations do the employer and the employee have in case of suspension of the IEA quarantine reasons?*

The rights and obligations of both parties (apart from the obligation of the employee to perform the work and the employer's obligation to pay the salary payments) continue to exist if, by legislation in

force, the collective agreements, the collective and individual employment agreements is not otherwise provided.

**5. Temporary cessation of work for reasons not depending on the employer or employee** (Article 80/1 of the Labor Code):

The temporary cessation of work represents the temporarily impossibility of continuation of production activity by the employer, by one or more internal subdivisions of it, by an employee or a group of its employees and can be triggered by:

- (a) reasons not depending on the employer or the employee;
- (b) employer's fault;
- (c) employee's fault.

The temporary cessation of work is recommended for economical agents who, for certain reasons, are unable to apply the technical unemployment regime (e.g. economical agents who cannot justify the existence of "objective economic reasons", which have exceeded the legal term of 4 months in a calendar year or for employers where there is a group of employees (or an employee) for whom there is a temporary impossibility of continuation of the activity due to causes not depending on the employer or the employee).

Unlike the technical unemployment, the temporary cessation of work is not a ground for suspension of the IEA, so the employer shall pay the salary in the size indicated below.

➤ *What documents are to be perfected in order to introduce the temporary cessation of work?*

The method of registration of the temporary cessation of work and the actual amount of the remuneration shall be established in the collective employment agreement, the IEA or the employer's internal rules.

If the employer has not established any rules governing the temporary cessation of work in the above-mentioned acts, the employer may:

- (i) complete its internal rules ('EIR') with specific temporary cessation of work regulations and issue an order for the amendment of the EIR;
- (ii) issue an order (or other act, taking into account the procedure adopted individually at the level of each employer, according to the EIR) for the establishment of the temporary cessation of work regime at for all the employees/ for a subdivision/group of employees;
- (iii) communicate to all employees the updated content of the EIR within five days of the approval of the additions, as well as, the content of the order establishing the temporary cessation of work regime (notified to the employees affected by the temporary cessation of work regime).

➤ *For what period can we apply the temporary cessation of work regime?*

This regime is applicable for an unlimited period of time, unless otherwise provided for in the collective agreement, the IEA or EIR.

➤ *What is the salary to be paid to the employees?*

During the temporary cessation of work, the employer shall pay the employees an allowance of at least 2/3 of the basic salary per unit of time established to the employee, but not less than the amount of a minimum salary per unit of time, established by the legislation in force, for each hour of temporary cessation of work.

➤ *Can we apply the temporary cessation of work regime only to a part of the employees?*

Yes, if the employer can demonstrate the impossibility of continuation of production activity by an employee or group of employees (e.g. lack of raw material for a group of employees).

➤ *What additional rights and obligations do the employer and the employee have in case of applying the temporary cessation of work regime?*

The Labor Code does not provide any specific rights or obligations.



On 01 April 2020, by taking responsibility before the Parliament, the Government approved the draft law on introducing measures to support citizens and the business activity during the state of emergency period.

Pursuant to this project, the Government has introduced a mechanism for subsidizing enterprises and non-commercial organizations, residents of the Republic of Moldova, which have established technical unemployment and/or temporary cessation of work, according to the provisions of art. 80 and 80/1 of the Labor Code, as follows:

1) enterprises and non-profit organizations which have discontinued totally or partially their activity, under the decisions of the ESC or NEPHC, shall benefit from a subsidy of 100% of the amount paid for: (i) income tax, (ii) compulsory state social security contributions owed by the employer, (iii) compulsory individual state social insurance contributions and (iv) compulsory health insurance premiums in the form of a percentage contribution owed by the employer and employee related to the allowance/salary paid to the employees who are in the technical unemployment and/or temporary cessation of work;

2) enterprises and non-profit organizations which have discontinued totally or partially their activity, other than those referred to in point (1) above, shall benefit from a subsidy of 60% of the amount paid for: (i) income tax, (ii) compulsory state social security contributions owed by the employer, (iii) compulsory individual state social insurance contributions and (iv) compulsory health insurance premiums in the form of a percentage contribution owed by the employer and employee related to the allowance/salary paid to the employees who are in the technical unemployment and/or temporary cessation of work.

The subsidy shall be granted for employees who are in the technical unemployment and/or temporary cessation of work, employed until 01 March 2020 and only for allowances/salaries related to technical unemployment and/or temporary cessation of work during the state of emergency period.

For more details on the procedure and conditions for granting the subsidy, visit: <http://www.particip.gov.md/proiectview.php?!=ro&idd=7261>

*Notes:*

1) the Labour Code regulates the possibility of suspension or termination of the IEA on the grounds of “force majeure, confirmed in the established manner” (Article 76 para. f) and Article 82 para. j) of the Labor Code), but considering that the legislation in force does not provide the way to “confirm” the force majeure, this clause cannot be applied in practice by the employer (note: the Chamber of Commerce and Industry of the Republic of Moldova no longer issues certificates confirming the force majeure event, and these certificates were issued previously only in relation to civil contracts);

2) the Labor Code regulates other possibilities through which the employee and the employer can negotiate the way of collaboration during the state of emergency period (e.g. the employee can use the annual leave), so the solutions described above are not exhaustive;

3) this legal analysis is based on the legislation of the Republic of Moldova in force on 01 April 2020.