

Is it lawful to convert an employment agreement concluded for an indefinite period to a fixed-term agreement?

According to the Romanian Labour Code, fixed-term employment agreements can only be legally concluded in certain situations. In practice, a fixed-term employment agreement differs in many ways from the agreement concluded for an indefinite period, which is the rule in Labour Law.

The idea of converting an employment agreement into a fixed-term instrument, even if the employee agrees to such conversion, is considered by specialists as contrary to the law. In fact, employees may denounce this operation in court, all the more if they were forced by the employer to accept the agreement change. However, there are situations where changing an agreement this way can be considered lawful.

Concluding an employment agreement for an indefinite period is the rule in the Labour Code. Exceptionally, in certain circumstances, employment agreements may also be concluded for specified periods.

The legislator determined that a fixed-term agreement may only be signed for one of the following purposes:

- to replace an employee in the event his/her employment agreement is suspended, unless the employee participates in a strike;
- to increase and/or temporarily change the structure of the employer's business;
- in case of seasonal activities;
- when it is concluded under legal provisions issued for the purpose of temporarily favouring certain categories of unemployed persons;
- to employ someone who, within five years from the date of employment, will reach retirement age;
- to hold an eligible position within trade unions, employers' organizations or non-governmental organizations during office term;
- to employ a retired person who, under the law, can cumulate pension and wage;
- in other cases, expressly provided for by special laws, or for carrying out works, projects or programmes.

Also, 36 months is the maximum period for which a fixed-term employment agreement can be concluded.

Therefore, if the employer is not in any of the above situations, it is not entitled to conclude a fixed-term employment agreement. The employer cannot choose between the two types of employment agreements, because Labour Law leaves no room for such choice.

Does it matter if the employee agrees to the change?

According to the Labour Code, an employment agreement can be modified in some respects, including the duration of a fixed-term agreement. However, the law does not mention anything about changing the duration of an employment agreement concluded for an indefinite period.

Both doctrine and practice generally indicate that such a change is not possible, in the sense that the process is illegal and the operation itself is void. In most cases, it was found that through the conversion of an employment agreement concluded for an indefinite duration into a fixed-term instrument, the legal provisions stipulating that the employees cannot waive their rights are violated, and any operation that aims at a waiver or limitation of their rights is void.

Moreover, even if the employees consent to the change, they still have the right to refer this matter to justice. They may request the annulment of the legal operation whereby the employment agreement concluded for an indefinite period was converted into a fixed-term employment agreement, and may even argue that the employer has forced or misled them to accept the operation.

However, there is a situation where conversion of the employment agreement is legal: the employee's position in the company is turned (objectively speaking) into one for which a fixed-term employment agreement is permitted.

As an example, the employer restricts its activity and decides to carry out activities during one season only, e.g. in the summer. In this case, there is a plausible reason for which changing the permanent activity of the employer into a seasonal activity could allow the employee to be employed under a fixed-term individual employment agreement.

However, in this case, the employer has just one option: to terminate the employment relationship with the respective employee and to start another one afterwards, for a fixed period of time, by complying with all the conditions stipulated in the Labour Code regarding this type of agreement.

The parties could agree to terminate the employment relationship with no need for the employee to resign or for the employer to dismiss the employee, but there are no guarantees that the employer will definitely conclude another employment agreement after the first one is terminated.