

## THE SUSPENSION OF THE INDIVIDUAL LABOUR AGREEMENT

Eufemia VIERIU

Petroleum-Gas University, Ploiești, Romania  
eufemia\_vieriu@yahoo.com

**Abstract:** *As it is well known, an individual labour agreement can be rightfully suspended through the consent of the parts or through a unilateral act of one of the parts. The suspension of the individual labour agreement is more a suspension of its effects, namely the performance of labour by the employee and the salary payment by the employer. This material approaches the forms of the suspension focusing on the rightful suspension cases. The last part of this study will tackle about the suspension of the individual labour agreement both from the perspective of the main judicial effect – the temporary cancelation of labour and payment – and from the perspective of preserving some rights of the employee referring to payment, seniority or his/her remaining in that work place.*

**Keywords:** the individual labour agreement, the rightful suspension, suspension through the consent of the parts, suspension through the unilateral act of one of the parts, the effects of suspension

The suspension of the individual labour agreement is in fact the temporary cancelation of labour relations.

The suspension of the individual labour agreement implies preventing the employee from performing labour and from receiving a salary from the employer. Other rights and obligations of the parts can continue to exist during the suspension if they are provided by special laws, by the applicable collective labour agreement, by individual labour agreements or internal regulation. If the individual labour agreement is suspended because of the employee, he will not benefit from any employee rights during the suspension [1].

Every time when during the suspension of the agreement there occurs a cause for permanently terminating the individual labour agreement, the legal termination cause prevails [2].

### 1. The legal suspension

The individual labour agreement is legally suspended by virtue of legal provisions, the consent of the other part (the employer) not being necessary.

The legal suspension covers numerous situations and operates according to law, not taking into account the existence of a will manifestation from the parts. There are situations when legal dispositions regarding the suspension of the individual labour agreement become applicable, as a result of the employee's will.

Situations when the suspension is legal:

#### 1.1. Temporary inability to work

This suspension is independent from the will of the employee, due to the occurrence of an illness or of a work related or non-related accident. During the time when the employee is unable to work he receives a social insurance indemnity

according to his salary and type of illness.

Temporary inability to work must be confirmed by a medical certificate, issued according to the regulations in force.

According to duration, the leave for temporary inability to work can be divided thusly:

- maximum 180 days per year, starting with the first day of illness; starting with the 90<sup>th</sup> day the medical leave can be extended up to 180 days by the specialized medic and up to 183 days with the approval of the expert medic of the social insurances [3]. For extremely serious illnesses the leave can be longer (usually, up to 2 years);

- maximum 90 days during a calendar year for those who have a labour agreement on a determined period;

- in case of work accident or professional illness, surgical emergencies, tuberculosis or other illnesses. The duration of the leave is equal to the duration of the temporary inability to work;

- If the sufferer does not recover until the ending of the the indemnity periods for temporary labour incapacity, the primary doctor or, as appropriate, the specialized doctor can suggest: invalidity retirement or, if thoroughly motivated, extension of the medical leave to over 183 days to avoid invalidity retirement and keeping the insured in activity [4].

### **1.2. Maternity leave**

The specialized legislation regarding medical leaves and medical social insurance indemnities regulates maternity and confinement leaves from which every insured woman (contributor to the social insurances fund) can benefit for a period of 126 days.

Maternity leave is granted on a period of 63 days before giving birth and the confinement leave on a period of 63 days after giving birth. They can compensate each other according to medical advice and personal option.

The minimum stage of contribution for granting maternity leave is a month paid in the last 12 months prior to the month of

the medical leave.

The monthly quantum of the maternity indemnity is of 85% of the average of the monthly income of the past 6 months, prior to the first days of medical leave.

For this indemnity the insurance contribution is not needed, the duration of the leave being assimilated by the contribution stage.

Maternity and confinement leave can compensate each other according to medical advice or personal option [5].

### **1.3. Quarantine**

Leave and indemnity for quarantine is granted to the insured who are prohibited to continue their activity due to a contagious illness during the period established by the certificate issued by the public health institution.

The monthly gross amount of the quarantine indemnity is 75% of the calculation base which is determined as the average of the monthly income of the past 6 months of the 12 months of the contribution stage up to the limit of 12 gross minimum salaries based on which the contribution for leaves and indemnities is calculated[6].

### **1.4. Exercising a function within an executive, legislative or judicial authority, during his mandate, if the law does not provide otherwise:**

The suspension is applied to the individual labour agreements of the employees who have been elected or appointed for public demnity functions, in the Parliament [7], Government, county or local councils, prefectures, city halls [8], etc.

The execution period of the mandate will be taken into account for establishing seniority, and for the temporary vacant post will be appointed a person with a labour agreement on a determined period.

### **1.5. Exercising a paid managing position in the union**

There are forbidden the modification and/ or termination of the individual labour agreements of the union members for

reasons regarding the union membership or activity [9]. The period when the person elected for management is paid by the union is considered seniority.

Likewise, the members elected for union management who work in the unit as employees have the right to reduce the monthly labour programme with a number of days dedicated to union activity, negotiated by the labour agreement without obliging the employer to pay for those days.

#### **1.6. Force majeure**

Force majeure is any external, unpredictable, absolutely invincible and inevitable event while the fortuitous case is an event that cannot be either predicted or avoided by the one who would have been summoned to answer if the event had not occurred [10].

If the employee or the employer cannot execute the labour agreement due to a force majeure situation his labour agreement will be legally suspended during that situation.

For identity of reason, the fortuitous case will determine the suspension of the labour contract because it is an event that is not in the power of either of the parts.

The following are considered force majeure cases: natural calamities (drought, earthquake, flood, storm), epidemics, epizooties, serious crisis of raw materials, difficulties of transport and supply, labour conflicts (for people who do not participate to strike).

#### **1.7. Preventive arrest**

If the judge appreciates that the law provisions are met he will allow the prosecutor's proposal of placing the defendant into preventive arrest, through motivated closure, for maximum 30 days that can be prolonged for another 30 days [11].

Legally suspending the labour agreement only lasts for the first period of 30 days because after these the employee can be dismissed by the employer [12].

#### **1.8. The termination of the period for which the notices, authorisations or certificates for exercising the profession**

#### **have been issued**

This legal suspension case of the agreement is of maximum 6 months. If by the end of this period the employee does not renew his notices, authorisations or certificates needed for exercising the profession the individual labour agreement legally terminates [13].

#### **1.9. In other cases expressly provided by law**

— Military service with or without reduced term, or concentration [14];

— Technical unemployment [15] – labour can no longer be performed by the employee for technical or economical reasons;

— The exercise of managing functions by doctors and pharmacists in their domain;

— The strike that leads to the legal suspension of the labour agreements of the employees who do not take part in it, if the continuation of labour is not possible for them. For the employees participating to the strike the suspension of the labour agreements occurs only as a will manifestation.

— Exercising punishment at the work place within the unit where the convicted is performing activity when the certain punishment is applied [16];

— Employing as public servants within the official cabinets [17];

— Starting the general gathering of the legal action against the executive director of the stock companies;

— During the time when the professional caregiver does not have an entrusted child;

— During the time when the port workers do not work, being the reserve staff.

— During the interruption of constructions activities because of meteorological reasons [18].

— During the period when the employee is a judicial assistant, as a representative of the unions, within the

committees for judging labour conflicts[19];

— During the judicial technical expertise[20], case in which the employees benefit from the time necessary to make the expertise without receiving payment ;

— During the collective interruption of labour because of extreme temperatures [21];

— During the time when public clerks (without those of the national protection, public order and national security domains) are elected or appointed for a function of public dignity [22].

## **2. Suspension through the consent of the the parts**

Suspension through the consent of the parts happens in the following situations:

— Unpaid leave (is given as a response to the employee's request for personal reasons);

— When the employee is taken off work in order to take some professional classes, at the employer's initiative;

— Position reservation in the case of teachers [23];

— The period when the employee is performing activities with the mountain rescue troupes;

— Interrupting the activity upon request, constituting a temporary suspension of the public clerk for a legitimate interest [24]. The request is approved by the manager of the certain public authority or institution. The period of the interruption must last between 6 months to 4 years, with the right to extend it for another 4 years. Resuming activity before the passing of the approved term is only possible with the consent of the manager of the certain public institution or authority.

## **3. Suspension by the unilateral act of the employee**

Suspension by the unilateral act of the employee usually occurs as a result of one of his options in the following

situations:

— Leave for child rising until the child is 2 years old or, in the case of disabled children, 3 years old.

— Medical leave for attending to an ill child who is up to 7 years old or, in the case of disabled children, for intermittent conditions, until the child is 18 years old [25]; the period is of 14 days a year for a child, without taking into account the case in which the child contracts contagious diseases, he is immobilised in a cast or undergoes surgery (in this situations, the period is established by the family doctor.

— Paternal leave [26];

— Study leave;

— Strike concerning the employees on strike;

— Unexcused absence.

## **4. Suspension by the unilateral act of the employer**

The suspension by the unilateral act of the employer occurs in the following situations:

— Detaching the employee in another unit [27];

— During criminal investigation, after the unit has informed the criminal investigation organs that the employee has committed an act that is not compatible with his post [28];

— If the employee has been sued for an act that is not compatible with his post;

— For magistrates the suspension is compulsory even if the certain act does not have any connection to the post [29];

— With disciplinary sanction for magistrates [30], doctors [31] and pharmacists [32];

— The time when the labour is not performed because of the unit's fault.

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## **5. The effects of the suspension**

Regardless of the reason it occurred, the suspension has the main effect of

temporary stopping the labour performance and the payment of the salary but keeping the individual labour agreement at the same time. Apart from this common element, the rights of the employee differ according to the cause of suspension, thusly:

a) During the suspension the employee can receive, as appropriate:

- Salary (if detached, occupying a managing post paid by the union etc.). Obviously, the salary never comes from the unit where the labour agreement is suspended;

- Indemnity (in case of temporary inability to work, maternity leave, leave for raising children under 2 years of age, punishment at the workplace etc.). Sometimes, the employee benefits from a scholarship, as in the case of doctorate scholarship with full attendance;

- Compensations (if the employee is not found guilty after the suspension).

b) Regarding seniority, the employee:

- benefits from seniority during: detachment, performance of military service in term, concentration or mobilization, leave for raising a child under 2 years of age etc;

- does not benefit from seniority if: suspended for disciplinary causes, inexcusable absences, unpaid leave, execution of punishment at the work place etc.

c) In some cases, during suspension, if the employee has no fault, the law prohibits the termination of the labour

agreement from the employer's initiative. As a rule, the employer cannot terminate labour relations in the following cases:

- during temporary incapacity to work;

- maternity leave;

- when the unit pressed criminal charges against the employee for an act that is not compatible with his post or he has been sued for such an act[33];

- when having a managing function in a union etc.

Due to the fact that the labour legislation does not have procedural regulations regarding the suspension of the individual labour agreement it is useful for the employee to draw a decision as an internal act of the employer through which:

- to allow suspension or to observe the existence of the suspension cause;

- to state its legal grounds;

- to record the effects of that suspension.

Thus, the records requested by law can be made in the work book (when appropriate) and it is generally ensured the full clarity of the development of the judicial labour relation.

The employee has the duty to come to the work place to resume his labour obligations when the suspension cause ends. At the same time, the employer has the obligation to accept him at work.

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