EXERCISING SOME UNQUALIFIED ACTIVITIES WITH OCCASIONAL DAYTIME ACTIVITIES

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Abstract: The lawyer is a natural person, a Romanian citizen or a foreign citizen, who has the capacity to work and who performs unqualified activities of an occasional nature for a beneficiary, against remuneration.

For the performed activity, the lawyer is entitled to a remuneration the amount of which is established by direct negotiation between the parties in an amount of the gross hourly remuneration which can not be less than the value / hour of the minimum basic salary per country guaranteed in the payment, (in 2018, the remuneration of the guest may not be less than 11.40 lei / hour according to GD 846/2017 for the establishment of the minimum gross basic salary on the guaranteed country in payment) and is granted at the end of each working day or at end of the week, before signing in the Registry of Evidence Day by the Deputy and Beneficiary. The revenue earned by payees in the form of remuneration per work beneficiary represents income assimilated to the salary for which the Fiscal Code is applicable. The calculation and withholding of the due tax shall be made by the beneficiaries of the works at the date of each payment of the daily gross remuneration or, as the case may be, at the payment date at the end of the week or at the date of payment at the end of the activity period. 76 par. (2) lit. r) of the Fiscal Code, the remuneration of the day-laborers represents income assimilated to salaries taxed with a tax rate of 10%. The income from the activity performed by the day-laborers is not due to the compulsory social contributions by the day-keeper or by the beneficiary. By Law no. 86 / 2018 for amending and completing the Law no. 52/2011 introduced the possibility of inter-mediation between the demand and the offer of working day by the accredited intermediation agencies stipulated in art. 133 of the law

Keywords: daysr, individual, work relations, renumbering, earned income, social contributions, mediation.

A. Activity by day and way of payment.

The definition of day is governed by Law no. 52/2011 regarding the exercise of occasional activities performed by the day-laborers as a "natural person, Romanian or foreign citizen who has the capacity to work and performs unqualified activities of an occasional nature, for a beneficiary, against a remuneration".

The legal relationships of work on the occasional activities of day-laborers are governed by:
Law no. 52/2011, regarding the exercise of some occasional activities performed by the day-laborers, published in the Official Gazette of Romania, Part I, no. 276 / 20.04.2011;
Law no. 86 of 4 April 2018 for amending and completing the Law no. 52/2011 on the carrying out of activities occasionally carried out by the day-laborers (Official Gazette No 313 of April 10, 2018).
Order of the Minister of Labor, Family and Social Protection no. 1439 / 29.04.2011
Minister of Finance no. 1.930 / 28.04.2011, approving the Methodological Norms for the application of Law no. 52/2011 regarding the exercise of occasional activities performed by the day-laborers, published in the Official Gazette of Romania, Part I, no. 300 / 02.05.2011.

Zillieri may be Romanian citizens, citizens of other states or stateless persons who have their domicile or residence in Romania, and the employment relationship between the notifier and the beneficiary may be carried out only with the consent of the parties without the conclusion in writing of an individual labor contract. A denominator may also be a minor, but not less than 15 years of age, and can only carry out activities appropriate to their physical development and their abilities, "if they do not violate their right to physical, mental, spiritual, moral and social rights, the right to education, and their state of health is not jeopardized. "For the performed activity, the lager is entitled to a remuneration the amount of which is established by direct negotiation between the parties in an amount of the gross hourly remuneration which can not be less than the value / hour of the minimum basic salary per country guaranteed in the payment , and is awarded at the end of each working day or at the end of the week before signing in the Evidence Register of the zilliers by the denominator and the beneficiary.

In 2018, the remuneration of the tenant can not be less than RON 11.40 per hour according to GD 846/2017 for the establishment of the minimum gross basic salary per country guaranteed in payment.

The revenue earned by payees in the form of remuneration per work beneficiary represents income assimilated to the salary. The calculation and withholding of the due tax shall be made by the beneficiaries of the works at the date of each payment of the daily gross remuneration or, as the case may be, at the payment date at the end of the week or at the date of payment at the end of the activity period.

According to art. 76 par. (2) lit. r) of the Fiscal Code, the remuneration of the elders represents income assimilated to taxed wages with a tax rate of 10%. The declaration of the income tax on salaries shall be made in the form 112, Annex 1 Tax receivables - row 01, code 602, "Tax on salary income", cumulating, as the case may be, with the other taxes on income from wages, of the other annexes in the statement.

The income earned from the activity performed by the day-laborers is not due to mandatory social contributions either by the dignitary or by the beneficiary.

It is to be remembered that the activity carried out by the day-laborers does not confer on them the quality of insured in the public pension system, the social insurance system for unemployment nor in the social health insurance system. Zillers will be able to make optional health and / or retirement insurance.

Certain day laborers can work for half a year at the same beneficiary.

Workers working in certain areas may work for more than 90 days for the same beneficiary, according to a normative act that has just entered into force. In addition, those who work more than 30 days in one place can be paid monthly if they have agreed with the beneficiary to receive the money otherwise than at the end of each working day.

The employees in certain fields of activity can work for the same beneficiary up to 180 days in a calendar year, according to the Law no. 105/2017 published in the Official Gazette, Part I, no. 376 of May 19, 2017. for amending and completing the Law no. 52/2011 regarding the exercise of occasional activities performed by the day-laborers. "No denominator may carry out activities for the same beneficiary over a period of more than 90 days aggregated over a calendar year, except for livestock farmers engaged in extensive livestock farming through the seasonal grazing of sheep, bovines, and seasonal activities within the botanical gardens under the accredited universities; the period may not exceed 180 cumulated days during a calendar year ", according to the law.
The rest of the elders are held, as in the past, to observe the maximum of 90 days stipulated in the law. Until the entry into force of Law no. 52/2011 for no category of day-laborers, this maximum number of working days could not be exceeded by the same beneficiary.

Also, Law no. 52/2011 has brought about a change and the way in which the money is paid. If the daydresser works for more than 30 days for a beneficiary, then he can receive the monthly money if he agrees with it (the agreement must be written). Of course, the rule is that the payment is to be made at the end of each day, or at the end of each week, also on the basis of the agreement between the worker and the one for whom he works "(...) payment of remuneration can be made no later than the end of the week or of the period of activity, respectively monthly, if the period of activity is longer than 30 days ", according to the act.

The old law stipulated that payment should be made, if there is a written agreement between the beneficiary and the dignitary, at the end of the activity period. As an example when the period is 60 days, let's say, the day's moneyman gets his money after all these 60 days, if he understood the way he worked for. However, according to the law, a first payment will be made after the first month, obligatory

In 2018, after raising the minimum gross wage, day workers receive more money. The daily hourly rate is calculated according to the gross minimum wage in the economy, and the increase of the minimum wage, starting January 1, 2018, up to the level of 1,900 lei has automatically led to the increase of the hourly working hours of the elders.

The gross minimum wage in the economy has increased since the beginning of the year to 1,900 lei, according to the Government Decision no. 846/2017 for the establishment of the minimum gross national salary guaranteed in payment, published in the Official Gazette, Part I, no. 950 of 29 November 2017, and this increase in the minimum wage also has an impact on the daily hourly rate. Thus, with the increase in the gross minimum wage, the hourly rate of these workers also increased.

For the performed activity, the greens are entitled to a payment whose value is negotiated with the beneficiary. According to Law no. 52/2011, "The amount of the gross hourly remuneration established by the parties may not be less than the value / hour of the minimum gross national salary guaranteed in payment".

Therefore, hourly remuneration has a minimum limit, which is calculated according to the hourly value of the minimum wage on the economy. Last year, the minimum salary was 1,450 lei, and the hourly remuneration was 8,735 lei, considering that the average of the hours worked per month was 166.

From January 1, 2018, as the gross minimum wage increased, the hourly earnings of the elders also rose. Specifically, after the minimum wage has risen to 1,900 lei, the hourly rate of one day may not be lower than about 11.40 lei (for an average of 166.66 hours / month).

According to the legislation on the activity of the goldsmiths, the payment can be made "at the end of each working day or at the end of the week, before signing in the Register by the denominator and the beneficiary".

Beneficiaries who do not comply with the provisions of art. 11 of Law no. 52/2011 regarding the carrying out of occasional activities performed by the day-laborers, that is to say, they do not pay at least the hourly amount of the minimum gross salary per country, may be sanctioned with a fine of 10,000 lei.

Beneficiary-employer who uses daily activities in agriculture, hunting and fishing; forestry, excluding forest exploitation; fish farming and aquaculture; fruit growing and viticulture; beekeeping; livestock; shows, productions cinematographic and audiovisual media, advertising, cultural activities; cargo handling; maintenance and cleaning activities, have the obligation:

- to set up the Registry of Evidence Day and to keep it at the headquarters;
- complete it before starting work and present the competent control bodies;
- submit monthly, at the latest on the 5th of each month, to the labor inspectorate where he has his / her headquarters an extract of the Registry of Evidence Day.

**B. The main amendments provided by Law no. 86 of 4 April 2018** for amending and completing the Law no. 52/2011 regarding the carrying out of occasional activities of day-laborers are the following:

- the maximum period for which a mover can carry out activities for the same beneficiary and for the wine-growing activities (maximum 180 days in a year) has been extended; the "standard" period for which a mover can carry out activities for the same beneficiary is 90 days in a calendar year.

Given done by amending and supplementing the Law no.86 / 2018, fields that can provide occasional activities by day laborers are solely those provided for in Article 13 of the Law no.52 / 2011, as amended

a) Agriculture, hunting and related services - Division 01;
b) forestry, with the exception of forest exploitation - division 02;
c) fisheries and aquaculture - Division 03;
d) Collection, treatment and disposal of non-hazardous waste - Class 3821 and Class 3811;
e) recovery of materials - group 383;
f) wholesale of raw agricultural products and live animals - group 462;
g) organization of exhibitions, fairs and congresses - group 823;
h) advertising - group 731;
i) performing arts - performances - class 9001, arts interpretation activities - shows - class 9002 and performing arts management activities - class 9004;

Given these amendments, fields that can provide occasional activities by day laborers are solely those provided for in Article 13 of the Law no.52 / 2011, as amended

j) research and development activities in biotechnology - class 7211, research and development activities in other natural sciences and engineering - class 7219;
k) research and development activities in social sciences and humanities - class 7220 (archaeological excavations);

l) landscape maintenance activities - planting, care and maintenance of parks and gardens, except for the private housing facility - class 8130;
m) increase planting material - ornamental plant growth, including turf for transplanting, care operations / cleaning trees, activities of nurseries, except for forest trees - Class 0130;
n) zoological, botanical and natural reserve activities - class 9140;
o) breeding and reproduction of semi-mammalian animals and other animals - class 0149;
p) hotels and other accommodation facilities - Division 55; hotels and other similar accommodation facilities - class 5510; accommodation facilities for holidays and short-term periods - class 5520 - children's camps, organized by the Ministry of Youth and Sports, directly or through its subordinate units);

q) accommodation facilities for holidays and short-term periods - class 5520 - cottages;
r) activities of sports facilities - class 9311;
s) activities of sports clubs - class 9312;
(t) Catering for events - Division 5621."

- It was clearly stated that the conclusion of the individual labor contract must be done at the latest on the day before the beginning of the activity by the employee. The same is the transmission of data to REVISAL (ITM).
- It was stated that for the mobile workers and for those who carry out activity at home, the employer has the obligation to keep records of the daily working hours, according to the written agreement, according to the specific activity carried out.

- A maximum threshold for the contravention consisting in receiving a person's work without the conclusion of an individual employment contract (either with a suspended contract or outside the agreed working hours) has been introduced; this will be sanctioned with a fine of 20,000 lei (10,000 lei for work outside the program with part time agreed) for each identified person, but without exceeding the cumulative value of 200,000 lei.

**C. Intermediation between daily supply and demand.**

- The primary legal framework was created for the establishment of intermediation agencies between the daily job demand and offer. The criteria and procedure for their accreditation will be approved by Government Decision.

Romanian and foreign trade companies will be able to be authorized as agents for mediation of the demand and supply of labor, according to a normative act that was recently published in the Official Gazette. In other words, authorized companies under the law will be able to act as intermediaries between those who want to work as day-laborers and beneficiaries, but they will not have the right to ask for money for mediation for the day.

Companies will be able to find the work of the elderly as a mediator between the demand and the offer of a working job soon, according to Law no. 86/2018 for amending and completing the Law no. 52/2011 regarding the exercise of occasional activities performed by the day-laborers. "The mediation between the demand and the offer of the daily work is the activity that connects the beneficiaries with the elderly, in order to establish, in accordance with the provisions of the present law, labor relations," explains the published document.

This mediation between the demand and the offer of work in the future will be done by accredited mediation agencies or subject to the notification procedure according to the Government Decision no. 277/2002 approving the Criteria for the accreditation of specialized service providers for the stimulation of employment. Accreditation will be done by the National Agency for Employment through its territorial units.

The law also shows who can be authorized as a mediation agency:

Authorities with legal personality established on the territory of Romania may be authorized under Law no. 31/1990 on companies, having as object the activity of “Employment agencies” - CAEN code 7810;

Legal entities established in other Member States of the European Union or in the European Economic Area (comprising, in addition to the Member States of the Union, Iceland, Liechtenstein and Norway) whether or not they have been subject to an accreditation or authorization condition for the provision of mediation services in the state of establishment and permanently established in Romania or providing such services on a cross-border basis to us, temporarily or occasionally.

However, labor mediation service providers who have already been accredited (and have no right to do so) or have fulfilled their obligation to notify the agency as written in GD no. 277/2002 no longer need to accredit once again to provide services.

All they have to do is notify the employment agency that they will also operate in this area.

The published normative act stipulates that companies that will provide mediation services between day-laborers and beneficiaries, without accreditation or without the notification provided by the law, will be able to receive fines ranging from 5,000 to 10,000 lei. And those who already work as labor mediators and do not notify the employment agency that they will also operate in this area risk the same fine.
Instead, a fine of between 3,000 and 5,000 lei will be penalized by those who do not communicate the data and information and do not present all the documents required by the labor agencies to carry out their duties and which are related to the control carried out. The accreditation criteria and the procedure will be further established by a Government Decision.

It is important to note that, as stipulated in the law, firms that act as mediation agencies for the work of the day-labourers will not be allowed to ask for money from those interested in working as day-labourers for their recruitment

- Employees hired through a brokerage agency will be able to work for the same employer for a maximum of 180 days in a calendar year (compared to 90 days the "standard" period).

**D. The reason for which individuals can not work as days in construction works.**

In order to clarify why the person working on a construction can not legally be regarded as a day-lover, we must look for the list of areas where he can work legally with the day, provided by Law no. 52/2011 as amended by the Law no.86 / 2018 And as it can be seen, the law does not include the construction field where it can work as a day.

We can draw the following conclusion: we can not hire construction workers because the law does not allow us to do so. Construction workers must have a legal framework in which to work (employment contract with everything that results from the employment relationship - the quality of the insured, the contribution to pensions, etc.), but also everything that is required occupational health and safety rules must have equipment appropriate to the work they carry out, have to train them, and so on

Those working in construction have to work on a labor contract, for them there is no other legal option to work. The Labor Code does not exempt from the sanction even the workers who work without legal forms, establishing that they can be fined by ITM inspectors with sums between 500 and 1,000 lei. In this situation, the persons who raise their own house can not In this situation he contracts with a construction company, the work case in which the responsibility for the lawfulness of the work lies with the one who hired the respective workers at that firm. Workers must therefore work on the basis of a written employment contract, regardless of whether they work in a company or directly for the beneficiary. Another reason that they can not be used in construction even for building the property is given by Law no. 10/1995 regarding the quality in construction, law requiring the hiring of a construction site supervisor: "The verification of the quality of the works executed for the construction of the constructions and the interventions for the existing constructions, for which (...) building permits or dismantling are issued, is mandatory and carried out by investors through authorized construction supervisors, employees of investors and by technical executives with authorized execution, employees of the contractors ", writes in the law. In addition, for violation of this obligation may be imposed fines of up to 10,000 lei by the inspectors.

Those who work on a real estate and have no employment contracts risk a fine or even get to jail.

If they do not contract with a construction company and understand directly with the workers, the beneficiaries of the works can not be considered other than employers, they have to conclude them with labor contracts. The situation of those who work on housebuilding or building rehabilitation without a contract of employment and without anyone taking care of their protection on the site is not a novelty in Romania. There is only an understanding between the one who gives the instructions, ie the owner and the one who puts it to work, which means practically almost any activity in connection with the works required for that building. The risk is assumed by practitioner only and the beneficiary only pays for the final. From the perspective of labor law (Labor Code, more precisely), those who employ "black" more than five commit an offense for which the
punishment is fixed between one and two years of imprisonment, and for less than five people labor inspectors may pay a fine from 10,000 to 20,000 lei for each identified person.

**E. Establishing, completing, transmitting and keeping the Zodiac Registry Register**

a. Obligations of the Beneficiary

f) S.C.A. - joint stock company;

g) P.F.A. - authorized person;

h) Î.I. - individual enterprise;

i) Î.F. - Family business.

In the case of the beneficiaries of works not mentioned in the abbreviations mentioned above, the normative act of establishment and organization

The Zodiac Records Register is:

a) official document with special regime for keeping the day workers;

b) data source for national policy-making in the field of employment identification of undeclared work as well as in the field of taxation;

c) administrative data source for the statistical information system such as: current statistics, follow-up of the indicators regarding the evolution of the employment and the labor market, the monitoring of the undeclared work cases, especially in certain fields of activity, the organization of an investigation system through survey.

The registration in the register is done in chronological order, for all the beneficiaries with whom the beneficiary has working relations under the law, according to the instructions for completion provided in Annex no.2 to the Law no. 52/2011, as amended and supplemented

Entry of the data into the register is done only with ink or blue paste. Any modification of the entered data is done by cutting with a horizontal line with ink or red paste and by entering the correct data, also with ink or red paste, leaving visible the registration and by applying the stamp and the signature of the work beneficiary.

Data entry is done in the chronological order of use of the zillion. The register is drawn up daily, except for periods when the services of the day-laborers are not used. There are no pages and free positions between the pages of the registry. On the first page of the register, the identification data of the beneficiary of the works is filled in. The model, content and instructions for completing the register are those set out in Annexes no. 1 and 2 to Law no. 52/2011 The register will be numbered, initialed and bound and can not be transferred between the entity. The Registry is printed and merged with the National Company "Imprimeria Națională" - S.A., and its distribution is made at the request and at the cost of the Labor Inspection through the territorial labor inspectorates

b. Obligations of Territorial Labor Inspectorates.

The territorial labor inspectorates submit half-yearly to the Labor Inspection reports on the evolution of the number of day-laborers by field of activity, the number of cases of violations of the provisions of Law no. 52/2011, with the subsequent amendments and completions, the sanctioning measures in these cases, as well as other information requested by the Labor Inspection.

The Labor Inspectorate centralizes data from the territorial labor inspectorate reports at national level and communicates to the Ministry of Labor, Family, Social Protection and the Elderly a report, in paper and electronic format, on a quarterly basis, on the evolution of the number of daily activity audiences, the number of cases of violations of the provisions of Law no. 52/2011, with the subsequent amendments and completions, as well as the sanctioning measures in these cases.

**F. Communicating, researching, recording, and reporting events where day-laborers were involved**

- Any event will be immediately communicated to the beneficiary by the manager of the workplace or by any other person who is aware of his / her production.

a. Obligations of the Beneficiary
The Beneficiary has the obligation to communicate events immediately, as follows:

The Beneficiary is responsible for complying with the legal provisions on the management, completion and maintenance of the Register, being responsible for the correctness of the data entered in the Register.

The register shall be kept at the premises of the works beneficiary and / or, where appropriate, at the headquarters of the branch, agency, representation, workstation or other such units without legal personality, and a copy thereof shall be transmitted to the territorial labor inspectorate on whose territory These entities operate.

Purchase of the register from the territorial labor inspectorate in whose territory the works are located and / or, as the case may be, from the territorial labor inspectorate in whose territory the branch, agency, representation, work point or other such units are located without legal personality, where they have been delegated the competence to conclude legal relations with the day-laborers.

Send to the territorial labor inspectorate a copy of the record containing the previous month's records, certified "according to the original".

the transmission to the territorial labor inspectorates of the copy of the register by branches, agencies, representations, work points or other such unincorporated establishments to which they have delegated their competence to enter into legal relations with day-laborers, will also delegate to them the competence to complete and the transmission to the territorial labor inspectorates of the copy of the register.

At each enrollment of a denier in the register the name and surname are written in capital letters, with the mention of the father's initials.

The name of the works beneficiary shall be entered in the register in large print, without abbreviations. Allowed abbreviations are.

a) S.C. - the company;
b) S.A. - Corporation;
c) S.R.L. - limited liability company;
d) S.N.C. - a company in a collective capacity;
e) S.C.S. - a limited partnership;

a) territorial labor inspectorates, all events
b) criminal prosecution bodies, as the case may be.
c) to take the necessary steps to avoid changing the state of occurrence of the occurrence of the event until the agreement of the investigating bodies has been received, unless the maintenance of this state would generate other events, worsen the state of the accidents or would jeopardizes the lives of the elders and other participants in the labor process.
d) If it is necessary to modify the factual situation resulting from the occurrence of the event, sketches or photographs of the place where the event occurred, will be identified and will be picked up any objects containing or bearing a trace of the event; the objects will be handed over to the organs conducting the research and will constitute evidence in the research of the event.
e) For any change in the factual situation resulting from the occurrence of the event, the beneficiary shall record on his / her own responsibility, in a report, any changes made after the occurrence of the event.
f) Expenditure related to the carrying out of the examinations, as well as those necessary for the analysis of the samples taken during the research, shall be borne by the beneficiary in which the event took place or who is responsible for the organization of the activity following which the event occurred.

Registration of Acid Days in the Single Registry of Wounded Zodiacs, based on the research report.
The beneficiary for whom the missing dignitary has been assigned shall, as soon as it has been informed, communicate the number and date of the court decision to the territorial labor inspectorate.

If the beneficiary does not agree with the conclusions set out in the research report of the event, I can notify the Labor Inspectorate in writing within 30 calendar days of receipt of the minutes.

b. Obligations The territorial labor inspectorate in which the event took place shall communicate to the Labor Inspection:
   a) the event that resulted in death;
   b) the event that resulted from a collective accident;
   c) the event that resulted in an accident followed by invalidity;
   d) the event that resulted in the disappearance of a person(s).

The event referred to in c) will be notified to the Labor Inspection after receiving the decision to be classified as a disability.

c. Event research
- The purpose of event investigation is to determine the circumstances and causes that have led to their production, the legal regulations violated, the responsibilities and the measures that need to be taken to prevent the occurrence of other similar cases and to determine the nature of the accident, after the communication, by the territorial labor inspectorate in the district where it occurred.

   Experts or specialists, such as those from economic operators with legal competence to perform technical expertise, may be required to investigate events, and they must respond to the request. The technical expertise produced will be an integral part of the research dossier of the event.

   The investigation of the events will be finalized with the drawing up of a dossier, which will contain the documents stipulated in art. 27 of Law 52/2011.

   The disappearance of a person in the event of an accident at work and in circumstances justifying the assumption of his death shall be recorded as a fatal accident after the final judgment has been finally and irrevocably settled, in accordance with the legal provisions stating death.

   (2) The occurrence of the fatal accident, stipulated in par. (1) is the date entered in the judgment.

f. The event research file shall be drafted as follows:
   a) in a copy, for events that have caused temporary incapacity to work; the file is kept at the territorial labor inspectorate that carried out the research;
   b) in two copies, for the events that produced a confirmed invalidity by decision, death, collective accidents, events that generated accidents followed by temporary work incapacity in which the committed acts can be considered as crimes; the original shall be forwarded to the criminal prosecution bodies and a copy shall be kept at the territorial labor inspectorate that carried out the investigation.

I appreciate that regulating the working relationships of the elderly led to the diminution of the phenomenon of "black" employment, the regulation of their activity and the obligations of the employer towards the days.

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