Romania

1. Do you have a plant closing law in your jurisdiction and if so, what does it require?

   The Romanian Labour Code sets forth clear and detailed rules on the employer's obligation in case it undertakes collective redundancies, meaning the dismissal of a determined number of employees due to economic or technological reasons or due to employer's activity reorganization within a period of 30 days.

   The number of employees dismissed that would trigger the applicability of the collective redundancies procedure varies depending on the total number of employees within the company, as follows:

   (i) at least 10 employees in case the employer has between 20 and 99 employees;
(ii) at least 10% of the total number of employees in case the employer has between 100 and 299 employees;

(iii) at least 30 employees in case the employer has at least 300 employees.

The employer has the obligation to notify in writing the trade union or the employees’ representatives its intention to perform a collective redundancy. The notification has to be performed in the form of a collective redundancy project that has to contain a minimum of information provided by the Romanian Labour Code. There is no legal obligation to inform and/or consult individually with the employees.

The notification has to be made at least 30 days prior the collective dismissal being performed. On the same date the employee has the obligation to notify the collective redundancy project to the local employment authority and to the territorial human resources agency. The collective labor agreement at national level currently in force sets forth higher notification terms determined based on the total number of employees, as follows:

(i) 45 days in case the employer has up to 100 employees;

(ii) 60 days in case the employer has between 101 and 300 employees;

(iii) 90 days in case the employer has over 301 employees.

The trade union or the employees’ representatives may propose any measures in order to avoid the dismissals or diminish the number of dismissed employees within 15 days from the employer’s notification receipt. The employer has the obligation to respond in writing to such proposal within 5 days. The local employment authority may extend the initial term, provided such extension is justified, with a maximum 10 days.

Except for the notification requirement, the employer also has the following legal obligations:

(i) to initiate consultations with the trade union regarding the measures that might be taken in order to avoid or diminish the dismissals especially through professional training programs;

(ii) to inform the trade union or the employees’ representatives about all relevant information related to the collective lay off.

Each employee included in the collective dismissal plan is entitled to a prior employment termination notification of at least 15 business days. The prior notification term that should be observed is provided by the collective labor agreement concluded at national level, namely 20 working days.

As a rule, the employment agreements of certain categories of employees may not terminated through collective dismissals, inter alia, those being temporary incapacitated, pregnant employees, employees in post maternity leave, those exercising a leading position within the trade unions, etc.

In case the employment is terminated without observing the prior notification requirement, the employee is entitled to a compensation of 100% of the monthly salary.

The Romanian Labour Code sets forth the possibility that the employees benefit of severance payments as provided by the applicable laws and/or the applicable collective labor agreement. In present there are no legal norms providing the amount of the severance payments applicable to private companies, except for the rule set forth under the collective labor agreement at national level provides that each dismissed employee may benefit of a minimum severance payment amounting to 50% of the monthly salary.

It is worth mentioning that the employer which has performed a collective dismissal may not hire new employees in the same job positions as those made redundant for a period of 9 months from such dismissal (the collective labor agreement concluded at national level provides a period of 12 months). Should the employer need to hire personnel, the former employees have the right to be rehired on the same job positions held before the collective dismissal. In case the former employees do not solicit to be rehired, the employer may employ new personnel.
2. **Are there special rules on releases/waivers in your jurisdiction?**

   Under Romanian law, the employees may not renounce to the rights recognized by law. Any agreement through which such rights would be renounced at or limited in any way shall be null and void.

   To the extent the above mention rule is complied with, the releases/waivers agreed to by the employees are enforceable under Romanian law, provided the requirements set forth under civil law are observed.

   Under the general principles of Romanian law, the parties to an agreement may agree on a waiver of liability. However, such waiver may not lead to the entire and unconditioned discharge of the debtor's liability, as such would render such liability discretionary. Thus, a waiver providing such entire and unconditioned discharge of liability is considered by the legal doctrine null and void.

   In addition, such waiver may not refer to the situations when the damages are caused by the party invoking such waiver as a result of an intentional act or of a gross negligence assimilated to an intentional act.

3. **What are the equal employment opportunity/non-discrimination categories in your jurisdiction?**

   The Romanian legal framework on non-discrimination is formed of (i) international conventions to which Romania is a party; (ii) internal laws and secondary legislation referring specifically to non-discrimination; and (iii) special legal provisions set forth under enactments in other fields.

   The Romanian Labour Code prohibits any direct or indirect discrimination performed in respect to an employee based on criteria such as sex, sexual orientation, genetic characteristics, age, national origin, race, color of the skin, ethnic origin, religion, political options, social origin, disability, family conditions or responsibilities, union membership or activity.

   It further defines the "direct discrimination" as actions and facts of exclusion, differentiation, restriction or preference, based on one or more of the above-mentioned criteria, the purpose of effect of which is the failure to grant, the restriction or rejection of the recognition, use or exercise of the rights stipulated in the labor legislation.

   The "indirect discrimination" is defined as the actions and facts apparently based on other criteria than the ones mentioned above, but which cause the effects of a direct discrimination to take place.


4. **What are the minimum wage and overtime rules (and exemptions) in your jurisdiction?**

   Under Romanian law, the minimum wage is set forth through Government decision. Currently, the applicable minimum wage is of RON 330 (around USD 115). Increased minimum wages may be set through the collective labor agreements at industry branch level.

   Under the Romanian Labour Code, the normal work duration is of 40 hours per week. Also, the employees may perform overtime, with the observance of the maximum threshold set forth by law, which is of 48 hours per week (overtime included).

   By exception, the working duration, including overtime, may be prolonged beyond 48 hours per week, provided the average working hours, calculated for a reference period of 3 calendar months, does not exceed 48 hours per week.

   Such reference period may be extended through the collective labor agreements at industry branch levels, without surpassing 12 months.

   The Romanian Labour Code also regulates the manner in which overtime should be compensated. As a rule, overtime should be compensated with paid days off in the next 30 days. In case such is not possible, the employees are entitled to a bonus of minimum 75% of the base salary.
The collective labor agreement at national level sets forth a different system related to the overtime bonus, as follows:

(a) 100% of the base salary, for overtime worked during normal working hours within the limit of 120 hours/year;
(b) 50% of the base salary, for overtime worked during normal working hours exceeding 120 hours/year.

The collective labor agreements at industry branch or company level may provide increased bonuses for overtime.

5. Is there employment-at-will, or some other rule, in your jurisdiction? What are the exceptions?

No, the Romanian law does not contain any provisions on employment-at-will. Furthermore, the Romanian Labour Code provides that an employment agreement may be terminated only in the cases and for the grounds expressly set forth therein.

6. What are the legal obligations upon terminating an employee in your jurisdiction?

Under Romanian law, the employer may terminate an employment relationship only for reasons imputable to the employee expressly set forth under the Romanian Labour Code or for reasons not determined by the employee’s fault.

The reasons imputable to the employee are:

(i) disciplinary termination (for gross misconduct or for repeated misconduct);
(ii) in case the employee is under preventive arrest for more than 30 days;
(iii) physical or psychological inaptitude (only based on a decision issued by the competent medical authority determining such inaptitude);
(iv) in case the employee is not professional suitable (adequate) to the position held;
(v) in case the employee meets the conditions referring to the standard age and the contribution stage and did not request to be retired in accordance with the law.

The dismissal on disciplinary reasons or because of the employee’s professional inadequacy may be decided only after a prior investigation. During such investigation, the employer is obliged to hear out the employee in question and to determine whether or not the aspects invoked by said employee are justified.

The employer may terminate the employment agreement for reasons non-incumbent to the employee in case of reorganization. Under Romanian law, such ground for dismissal needs to be real and serious. However, the judicial practice is constant in stating that the court has no right to judge the economic reasons invoked by the employer on which the reorganization is based. Reorganization may be performed by either individual or collective dismissal.

The employer may not dismiss any employee (irrespectively of the reason) if such employee finds himself/herself in certain situations expressly provided by the Romanian Labor Code, such as the existence of a temporary working incapacity, medically certified; in case of pregnancy, provided the employer was aware of such condition; during the performance of military service; during annual leave, etc.

The employment termination performed without observance of the legal provisions is null and void. In case of an action in court for the annulment of the lay off decision the employer may not invoke other factual or legal reasons than those provided by the employment termination decision.

In case the termination has not been legally performed, the court may grant the employee an indemnification amounting to the total value of the salaries that he/she should have received and, upon request, may decide the re-employment. The court may also decide the payment of indemnities for the moral damages suffered by the employee due to such wrongful dismissal.
The refusal to execute a court decision regarding the reinstatement of a person wrongfully dismissed is qualified by the Romanian Labor Code as a criminal offence, punishable by imprisonment from 6 months to 1 year, or criminal fine.

7. Are there Family and Medical Leave laws in your state beyond the FMLA and if so what do they require

The medical leave is provided by Law no. 19/2000 regarding the public pensions system and other social security rights.

The medical leave is considered a form of social protection for employees. In this respect, the employees benefit from an indemnification for temporary incapacity to work, for a period of maximum 180 days per year.

The indemnification for temporary incapacity to work is 75% of the average monthly income/wage of the last six months. For certain professional diseases, working accidents, surgical emergencies, AIDS, cancer, tuberculosis and other disease, the rate is of 100% of the salary.

In addition to the regular paid leaves, employees are entitled to 5 paid days off in case of marriage.

8. Please list any miscellaneous, interesting or oddball laws in your state, and describe under what circumstances they pertain

Temporary assignment for injured workers – Such issue is not regulated under Romanian law. The main elements of the employment relationship (including the job position) may be modified only pursuant to the parties' agreement. Therefore, in case the employee agrees, he/she may be temporary assigned to another position that is more adequate to his/her health.

Meal and rest break - If the daily duration of work time is more than 6 hours, employees are entitled to a lunch break and to other breaks, under the conditions set out by the applicable collective labor agreement or the internal regulation.

The collective labor agreement at national level stipulates that employees are entitled to a daily meal break of at least 15 minutes, which is included in the daily working period.

Workers are entitled to at least 12 hours of rest between shifts. Weekly rest periods are usually granted on Saturdays and Sundays for the 5-day working week.

In case the Saturday and Sunday rest could prejudice the public interest or the employer's normal activity, the weekly rest may also be granted on other days set out by the applicable collective labor agreement or the internal regulation.

The weekly rest days can be granted cumulatively as an exception, after a period of continuous activity that cannot exceed 15 calendar days, upon the authorization of the local employment authority and the agreement of the trade union or employees’ representatives, as the case may be.

Breast feeding and expressing breast milk – Such issues are not expressly regulated by the Romanian legal norms. Moreover, there are no specific legal provisions requiring employers to provide nursing rooms or child care centers.

Weekly payment of wages – the Romanian Labour Code provides only the rule according to which the salary shall be paid at least once per month. Consequently, the employer and the employee are free to agree upon a weekly payment.

Criminal history in job applications – Although not expressly regulated, in practice the employers require that the applicants file their criminal record. The employer decides whether to employ a person or not based on, among other criteria, the information provided in such criminal record.
Notice of electronic surveillance - According to Romanian legislation, the right to privacy is a fundamental right, protected by the Romanian Constitution. As a continuation of such, the Romanian Constitution also protects the privacy of the communications, irrespective whether transmitted by telephone or by other electronic means of transmission. Romania is also part to the European Convention on Human Rights, therefore it has to strictly observe all principles set forth therein (including the right to privacy).

The Romanian Labour Code provides that employees have the right to dignity at the workplace. Such legal provisions also stipulate that the employees have the right to be informed and consulted in matters that concern the activities performed for the employer.

Secondly, according to Romanian employment legislation, the employer has the legal obligation to consult with the union or with the employees’ representatives, as the case may be, as regards any decisions that are likely to affect in a substantial manner the rights and the interests of the employees.

As the right to privacy is a fundamental right that may be substantially affected by an electronic monitoring, the requirement of consultation with the trade union should be strictly observed.

Taking into consideration the above mentioned, it appears that the electronic surveillance of the employees is permitted under Romanian legislation. However, certain conditions must be complied with, as follows:

(i) The prior and unequivocally consent of the employee – this consent must be given in an explicit written form;
(ii) The prior consultation (not approval) with the union or with the employees’ representatives;
(iii) The prior notification of the supervisory authority with respect to the personal data processing.

In respect to the latest rule mentioned above, as a rule, employers are exempted from the obligation to notify the processing of their employees' data, undertaken in relation to the performance of their obligations under the employment and social security laws.

The competent authority’s current practice in this matter is to interpret this exemption broadly, including all processing operations undertaken by employers in respect to their employees. However, as the processing performed as a result of implementing the electronic surveillance is not strictly related to the employer's obligations set forth under law; it is possible that the competent authority request the submission of a notification in relation to the surveillance.

9. **Does your state have a law requiring giving employees access to, or copy of, their personnel records?**
   
   There are no legal provisions requiring the employers to give employees access to their personnel record. However, the legal norms provide that the employees have the obligation to provide the employee, upon request, with any document or information attesting the status of his/her employment (e.g. the seniority, positions held in the past, etc.).

10. **Does your state outlaw or restrict drug tests, alcohol tests, genetic tests or any other kind of testing?**
    
    Drug, alcohol, genetic testing or any other kind of testing are not restricted under Romanian laws. The only legal provision in this respect regards the pregnancy testing which is prohibited as a condition of employment.

11. **Does your state have any special rules on the payment of sales commissions**
    
    There are no special rules under Romanian law with respect to the payment of sales commissions.

12. **What are the basis rules on enforcing non-competes and related agreements in your state?**
    
    According to the Romanian Labour Code, as amended, the parties may agree that “upon the execution of the employment agreement or during the performance of such agreement, the parties may agree to the inclusion in such agreement of a non-competition clause, according to which the employee shall be restrained after the
termination of the employment agreement from undertaking on his behalf or on behalf of third parties, of an activity that is in competition with the activity performed for his former employer, in exchange to a monthly non-competition indemnity to be paid by the former employer for the entire duration of the non-competition period”.

The current form of the Labour Code provides that the non-competition clause shall produce effects only after the termination of the employment agreement (as opposed to the previous version, which provided the possibility for the non-competition clause to produce effects after the termination of the employment agreement only as an exception).

In addition to the requirements related to the form of the non-competition clause, the Romanian Labour Code, as amended, provides detailed requirements regarding the content of the non-competition clause. Accordingly, in order to be valid under Romanian law, a non-competition clause has to expressly include references to at least the following main elements:

(i) the restricted activities

The non-competition clause has to clearly indicate the activities that the employee will not be allowed to undertake after the termination of the employment agreement. Such restriction set forth under the non-competition agreement may only include the activities actually performed by the employee for the former employer, and not all activities undertaken by the latter.

The restriction shall apply to both the activities that the employee may undertake on his own behalf or on behalf of other third parties.

(ii) the duration of the restriction

The non-competition clause may produce effects for a period of maximum 2 years from the date the related employment agreement is terminated. As opposed to the initial version of the enactment, the current form of the Labour Code does no longer makes any distinction between the positions occupied by the employees (i.e., execution or management positions). Accordingly, the employer may opt for a non-competition clause of up to 2 years in any situation, and not only for the management position.

As the Romanian Labour Code provides a general limitation regarding the maximum duration of the non-competition clause, it is up to the employer to determine the exact duration of such clause, on a case-by-case basis, and subject to the employee’s consent.

(iii) the restricted third parties

From the wording of the Romanian Labour Code, it appears that currently in order to conclude a valid non-competition clause, the employer has to expressly list the third parties that are in competition with it and to which the restriction set forth under the non-competition clause shall apply.

(iv) the restricted geographical area

The geographical area object of the restriction has to represent the area where the employee may be in real competition with the former employer.

(v) the amount of the non-competition indemnity

The Romanian Labour Code provides only the minimum amount of the non-competition indemnity, i.e., 50% of the average monthly gross salary revenues obtained by the employee during the last 6 months prior to the termination of the employment agreement (or, in case the duration of the employment agreement was less than 6 months, the average monthly gross salary revenues earned by the employee during such employment agreement).

As the Romanian Labour Code refers to “salary revenues”, all premiums and bonuses earned by the employee shall be taken into consideration in the determination of the non-competition indemnity.
The non-competition clause shall not produce effects in case the employer terminates the employment agreement for reasons non-incumbent to the employee or in case such agreement terminates de jure, for expressly determined reasons, i.e., (i) in case the employee dies or is presumed dead through irrevocable court decision; (ii) the employer, natural person, dies or is presumed dead through irrevocable court decision; (iii) the dissolution of the employer, legal person; (iv) the absolute nullity of the employment agreement; (v) the issuing of an interdiction to undertake a profession or a function; (vi) the withdrawal of the parents or legal representatives’ consent, in case of employees between 15 and 16 years old.