

# Aspects Regarding Annual Leave and Weekly Rest-Basic Rights of Employees in Romania

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**Abstract:** This material proposes the description of some general aspects regarding the employees' right to vacation, but also regarding their weekly rest as the main forms of rest and aimed at restoring physical and intellectual strength. Employers have legal obligations in granting them and in case of non-compliance, the sanctioning force of the state intervenes through the control actions of the Labor Inspectorate. Data on the number of checks and sanctions applied are reproduced in the pages of this work in order to highlight the degree of compliance with labor legislation by employers.

**Keywords:** *annual leave; weekly rest; controls; contraventional sanctions.*

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## **1. Weekly rest – regulation and particularities**

Weekly leave is one of the forms of free time, the necessity and special significance of which results from the content of the legal provisions that regulate it, as well as from the practice of social labor relations. Its positive influence on the health of employees, the recreational possibilities it offers, its role as a factor in increasing labor productivity, the advantages arising from the payment of the due allowance during its duration - therefore its economic and social functions - highlight the importance of weekly rest (Ticlea, 2020).

At the European level, the regulation is represented by the Directive of November 4th, 2003/88/EC (European Parliament and European Council, 2003) regarding certain aspects of the organization of working time. This establishes, among other things, requirements regarding the duration of annual paid leave of at least four weeks for employees, according to the recognition and granting conditions provided by national legislation and/or practice (Enescu, 2012).

An equally important role is played by collective labor contracts or collective labor agreements for employees, civil servants, within the public administration in which special durations of vacations will be stipulated according to negotiations or legal regulations. In this sense, we recall Law no. 62/2011 on social dialogue (Parliament of Romania, 2011) on the basis of which collective contracts/agreements will be negotiated.

At the national level, the right to weekly leave is a constitutional right, being provided in art. 41 para. 2 of the Constitution (Parliament of Romania, 2003), which refers to social protection measures including paid leave.

Law no. 53/2003 on the Labor Code, in art. 39 para. 1 letter c, art. 144-art. 151 (Parliament of Romania, 2003) is the framework organic law that guarantees all employees the right to paid annual leave and that cannot be subject to any renouncement, waivers or limitations.

## **2. The duration of the leave and its exercise**

"The minimum duration of the annual leave is 20 working days" according to the Labor Code, art.145 para.1 and para.2 of the same article provides that "the effective duration of the annual leave is established by the applicable collective labor agreement, is stipulated in the individual employment contract and is granted proportionally to the activity performed in an year" (Parlamentul României, 2003). So, its effective duration will be found in the employee's individual employment contract.

As for the duration of annual leave for employees with part-time individual employment contracts, the legislator (Romanian Parliament, 2003) states that it is granted proportionally to the time actually worked.

For certain categories of employees, vacation periods have been established in the professional statutes, such as:

- The law on education for teaching staff, art. 266 para. 1 (Parliament of Romania, 2011) provides that the duration of the annual leave for pre-university teaching staff is 62 working days during the school holidays and, in the case of university staff, they benefit from the annual paid leave established by the University Senate, during the university holidays, with a duration of at least 40 working days.

- Statute of police officers - Law 360/2002 (Parliament of Romania, 2002) and H.G. 1578/2002, amended, regarding the conditions under which the police officer has the right to rest, study and paid leaves, unpaid leaves, rest tickets, treatment and recovery (Government of Romania, 2002).

Thus, according to paragraph 1 of Government Ordinance no. 1578/2002 (Government of Romania, 2002), every year, police officers have the right to a paid vacation, the duration of which is determined in relation to their length of service, as follows:

- a) 32 days per year, for those with up to 10 years of service;
- b) 38 days per year, for those with more than 10 years of service

- Government Ordinance no. 250 of May 8, 1992, republished, (Government of Romania, 2002) regarding vacation and other leaves for employees from the public administration, from the autonomous regions with particular specificity and from the budgetary units, stipulates, in paragraph 1 that "every year, employees from the public administration have the right to a paid leave, with a duration of 21 or 25 working days, in relation to their seniority". Employees with up to 10 years of service have the right to 21 working days and those with more than 10 years have the right to 25 working days.

As for taking leave, art. 146 para.1-3 of the Labor Code (Parliament of Romania, 2003) makes special reference: "Leave of rest is carried out every year. If the employee, for justified reasons, cannot take, in whole or in part, the annual leave to which they were entitled in the respective calendar year, with the consent of the person in question, the employer is obliged to grant the unused leave within a period of 18 months starting with the year following the year in which the right to annual leave was due".

However, it is not specified what happens if the holiday is not granted in the following year either. It is natural to grant leave in the respective year as well, since the purpose of taking it in kind is to restore the

labor force, and "compensation in money for unused vacation leave is allowed only in case of termination of the employment contract" (Țiclea, 2020). It was argued that the provisions of art. 146 of the Labor Code, which limits the monetary compensation of annual leave only in case of termination of the individual employment contract, contravenes the provisions of art. 41 of the Constitution regarding economic freedom.

Ehen rejecting the exception of unconstitutionality, in Decision no. 46/2007 (Constitutional Court, 2007), the Constitutional Court of Romania held that "the duration of the leave is proportional to the period of work performed, and there is an obligation to pay the leave allowance rests on the employer who benefited from the employee's activity".

In the event of the termination of the individual employment contract, it is no longer possible to take annual leave and, for this reason, the employee is entitled to receive compensation in money for the days of leave that were due to them in proportion to the period of work and that they did not take. This right of the employee and the correlative obligation of the employer do not in any way affect the right of the person to an economic activity and to free initiative according to the Decision. no. 224/2007 (Constitutional Court, 2007).

### **3. Weekly rest according to the provisions of the Romanian Labor Code**

As in the case of establishing the maximum duration of the rest period and regarding the regulation of paid holidays, the legislation of weekly rest was in the past a constant objective pursued by employees.

According to article 132 of the Labor Code, "weekly rest is granted on two consecutive days, usually Saturday and Sunday" (Parliament of Romania, 2003). Therefore, according to the text, paragraph 1, the rest must be granted compactly (48 hours continuously), after the 5 days of activity, at the end of the week, considering that it fulfills an important role in terms of the safety and health of employees, restoring the labor force after the effort made in the 5 working days of the week (Țiclea, 2020).

However, the legislator also provides an exception in the content of art. 137 para. 2: "if the rest period taken on these days would harm the public interest or the normal development of the activity of the employer, it can also be granted on other days established by the applicable collective contract or by the internal regulation of the employer" (Parliament of Romania, 2003).

The employees who work on Saturdays and Sundays benefit from a salary increase under the conditions provided by the collective agreement or the internal regulations.

In exceptional situations, but with the authorization of the Territorial Labor Inspectorate and with the agreement of the union or, as the case may be, of the employees' representatives, the weekly rest days may be granted cumulatively, after a period of continuous activity that cannot exceed 14 consecutive days. As a consequence, employees are entitled to a salary increase. We find that the Romanian legislator does not allow work to be performed for more than 14 days (two weeks) continuously, without weekly rest. In such a situation, the following are necessary: the authorization of the Territorial Labor Inspectorate (county inspectorate or Bucharest municipality inspectorate) and the agreement of the trade union, or, as the case may be, of the employees' representatives.

The weekly rest can be suspended only for emergency cases and which require immediate execution in order to organize measures to save the employer's persons or property, but also to avoid accidents and remove their effects on the unit's goods, installations or buildings. In these situations, employees have the right to double the salary to which they are entitled to according to the salary established in art. 123 of the Labor Code, which cannot be less than 75% of the basic salary (Parliament of Romania, 2003).

#### **4. Aspects of the non-compliance with the legislative provisions regarding rest leave and weekly rest**

##### ***4.1. Analysis of the national-level control activity for non-compliance with the provisions of the Labor Code regarding the granting of rest leave to employees (2011-2019)***

a) The amount of fines applied to employers by the Labor Inspectorate, at the national level, for violating the obligation provided for by the Labor Code, regarding vacation leave, between the years 2011-2019.

According to the data collected from the Annual Activity Reports of the Labor Inspection according to the International Labor Organization Convention. no. 81/1947 (International Labor Organization, 1947) we note the following results of labor inspectors' controls.

- In 2011 according to art. 260, para. 1, letter h, 51 employers were sanctioned for violating the obligation provided for in art. 140; the amount of fines applied was 83,000 lei.

- In 2012, 1 fine was applied for violating the obligation provided for in art. 140; the value of the applied fine was 5,000 lei.

- In 2013, 1 fine was applied for violating the obligation provided for in art. 140; the value of the applied fine was 1,500 lei.
- In 2014, 2 fines were applied for violating the obligation provided for in art. 140; the amount of fines applied was 4,500 lei.
- In 2015, 1 fine was applied for violating the obligation provided for in art. 140; the value of the applied fine was 1,500 lei.
- In 2016, 1 fine was applied for violating the obligation provided for in art. 140; the value of the applied fine was 1,500 lei.
- In 2018, 3 fines were applied for violating the obligation provided for in art. 140; the amount of fines applied was 8,000 lei.
- In 2019, 0 fines were applied for violating the obligation provided for in art. 140; the amount of fines applied was 0 lei.

Comparatively, we note from previous data and Table no. 1 that from 2011 to 2019, in 2011 the highest value of fines with the highest number of controlled employers was recorded - 83,000 lei.

**Table no. 1** - Number of fines and the amount of fines levied by the Labor Inspectorate (2011-2019)

YEAR	NUMBER OF FINES/FINED EMPLOYERS	VALUE OF FINES
2011	51 employers	83.000 lei
2012	1 fine	5.000 lei
2013	1 fine	1.500 lei
2014	2 fine	4.500 lei
2015	1 fine	1.500 lei
2016	1 fine	1.500 lei
2017	-	-
2018	3 fine	8.000 lei
2019	0 fine	0 lei
<b>TOTAL</b>	<b>9 fine</b>	<b>105.000</b>

Source: Author's own processing based on the data provided by the Labor Inspectorate available from <https://www.inspectiamuncii.ro/raport-anual-al-activitatii-inspectiei-muncii>

#### ***4.2. Analysis of the nation wide control activity regarding non-compliance with the provisions of the Labor Code on the granting of mandatory weekly rest to employees (2019-2021)***

According to the Annual Report of the Labor Inspection Activity for 2021 (Labor Inspection, 2021), labor inspectors applied the following fines based on the provisions of art. 260 al.1 letter j of the Labor Code:

- in 2021, 554 fines were applied for non-compliance with the legal provisions regarding the granting of weekly rest, the value of the applied fines was 1,240,900 lei;

- in 2020, 600 fines were applied for non-compliance with the legal provisions regarding the granting of weekly rest, the value of the applied fines was 1,280,800 lei;

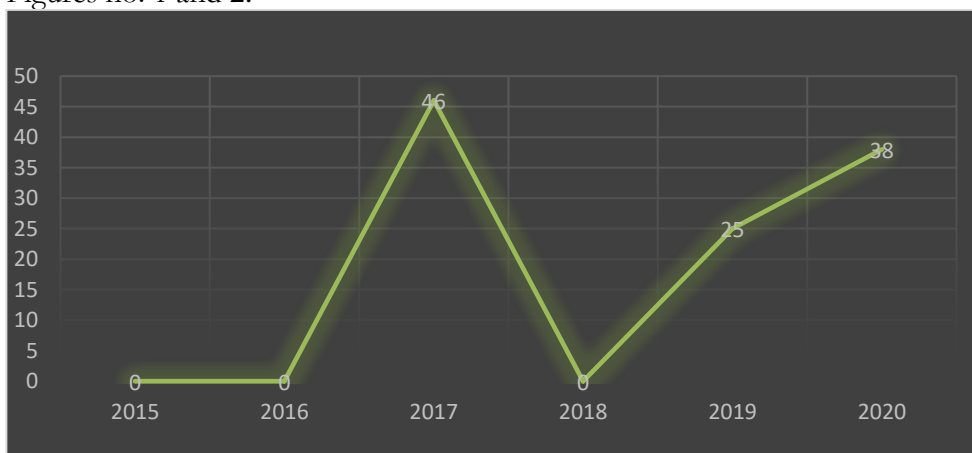
- in 2019, 613 fines were applied for non-compliance with the legal provisions regarding the granting of weekly rest, the value of the applied fines was 1,245,500 lei;

We can see from the data above that 2019 was marked by the most controls (613 controls) followed by 2020 (600 controls). The amount of fines was the opposite, the highest amount was recorded in 2020 (1,280,000 lei) followed by 2019 (1,245,500 lei).

#### ***4.3. The control activity of the Labor Inspection regarding non-compliance with the legal provisions regarding the granting of weekly rest***

Non-compliance with the legal provisions regarding the granting of weekly rest is sanctioned with a fine from 1,500 lei to 3,000 lei, according to the Labor Code, art 260 paragraph 1 letter J.

The number of warnings and the amount of fines are shown in Figures no. 1 and 2.



**Figure no. 1** - Evolution of warnings issued at the level of Suceava county, 2015-2019

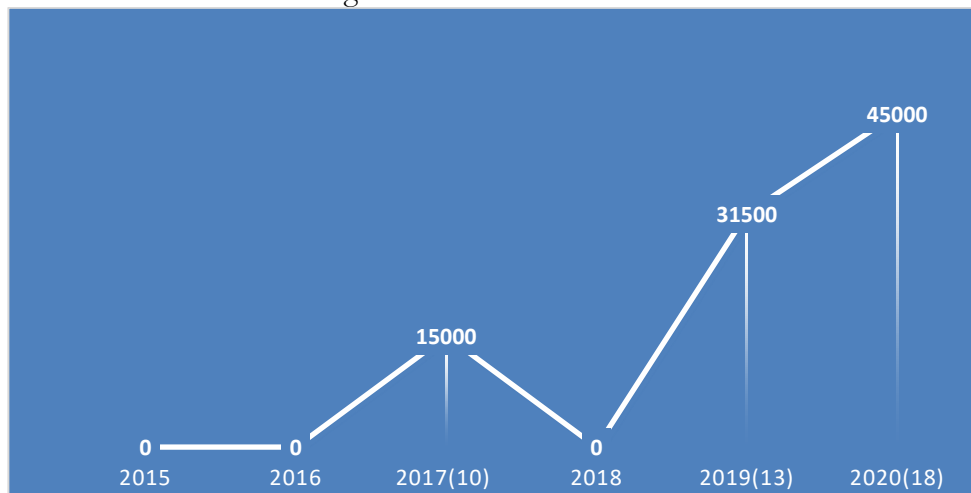
Source: Processing based on the data provided by the Territorial Labor Inspectorate of Suceava county, [www.itmsv.ro](http://www.itmsv.ro)

As we can see, data is missing on the Territorial Labor Inspectorate of Suceava county website for the years 2015, 2016, 2018.

It can be seen from Figure no. 1 and Figure no. 2 that although in 2017 we had the highest number of warnings (46) and the lowest fines, because the fines were given at the minimum amount.

In 2019 the fines started to be tougher financially speaking (31500 lei) and fewer warnings compared to 2017 were issued, while many fines probably occurred from 2000-2500 lei upwards.

2020 remained just as tough, with more numerous and bigger fines, and of course more warnings.



**Figure no. 2** - The number of fines and their value in lei in of Suceava county 2015-2019

Source: Processing based on the data provided by the Territorial Labor Inspectorate of Suceava county, [www.itmsv.ro](http://www.itmsv.ro)

## **5. Summary of the activity and controls carried out in the fields of labor relations and occupational safety and health in August 2022, by the Territorial Labor Inspectorate of Suceava county**

In the period 01-31.08.2022, the activity of the Territorial Labor Inspectorate Suceava had as its main objective the realization of the Action Program of the Territorial Labor Inspectorate for the year 2022, the objectives established according to Law no. 108/1999 republished, Law no. 53/2003 republished and of Law no. 319/2006, with subsequent amendments and additions.



During the above-mentioned period, the labor inspectors from the I.T.M. Suceava carried out 206 controls, of which 159 in the field of labor relations and 47 in the field of occupational health and safety. For the identified deficiencies, 131 contravention sanctions were applied in the total amount of 280,000 lei. Among the deficiencies frequently found was the non-compliance with the legal provisions regarding the granting of vacations but also regarding the weekly rest.

## Conclusions

Rest leave represents the main form of free time, being defined as the length of time a person needs for physical or mental recovery, work being necessary for man to ensure his daily living. Rest is equally important for the recovery of the workforce, but also for everyone's personal needs.

We can consider the weekly rest as a second form of free time, periodically and weekly, which aims to restore the employees' body, in other words, a way to charge the employees' batteries for another work week.

We have found from the analysis of the reports of the Labor Inspectorate and also of the Suceava Territorial Labor Inspectorate that employers violate, with intent or by mistake, the right to rest leave of employees and in the event that it is detected, specific contraventional sanctions are applied. We consider the amendment of the Labor Code, recently carried out, to be beneficial, for the aspect that it has established exceptions to the rule of granting vacation leave and in an interval of 18 months since the birth, as well as the granting of the 48 consecutive days on days other than weekends or after a period of 14 working calendar days.

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