

## The overlapping of tele-working and posting under Romanian legislation

The institution of posting (in Romanian: “*delegare*”), as well as the payments due by the employer in case the provisions related to posting arise, traditionally did not posit notable issues, either to labour law practitioners or to payroll specialists.

However, after March 2020, when the majority of white-collar employees from urban areas have turned to “smart”/“remote” working, certain issues have arisen in situations in which posting and tele-working may overlap.

In the beginning, it should be noted that there is no conclusive court practice yet in this field, either from a strictly labour law or payroll perspective.

In the following paragraphs, we shall briefly address the following issues: the overlapping of tele-working and “posting” from a labour law perspective and the payments due by the employer in both cases.

Under the Romanian Labour Code, “posting” is a case of unilateral amendment of the individual labour agreement, for a temporary period, and is defined as the **temporary exercise** by the employee, of work or duties under his/her job description, **outside of the normal order set by the employer**, and outside **his/her place of work**.

The Romanian Labour Code goes on to establish that this temporary change of the place of work of the employee may be unilaterally decided upon by the employer only for a period of a maximum of **60 calendar days in 12 consecutive months**. Any successive extension of a posting for periods of a maximum of 60 calendar days will afterward require the consent of the employee.

On the other hand, “tele-working”, which is regulated by Law 81/2018, is defined as a form of organization of work, whereby the employee, **regularly and voluntarily** fulfils his/her job duties in **another place than the place of work organized by the employer**, using **information and communication technology**. A former provision stipulated that tele-working, in order to be considered as such, had to be carried out at least one day per month. However, the Romanian legislature has waived this legal condition in a recent amendment of Law 81/2018.

The first issue that should arise would be if an employee who is carrying out his/her job duties under a tele-working addendum/agreement may be (temporarily) under the provisions of the Romanian Labour Code relating to posting.

Prior to the entering into force of Government Emergency Ordinance 36/2021, which amended Law 81/2018, in the sense that, in the agreement concluded between the tele-worker and the employer the “place of work” is no longer mandatory to be inserted, the answer to this question was very simple.

Thus, a tele-worker with the **place of tele-working expressly provided** for in the tele-working agreement/addendum, whose place of work was/is unilaterally and temporarily changed by the employer will come under the provisions of the Romanian Labour Code relating to posting.

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The above-mentioned solution is logical, since posting does not refer to the carrying out of job duties outside the **place of work organized by the employer**, but outside the actual **place of work**.

However, after the amendments to Law 81/2019, in the wake of which the place of tele-working is no longer a mandatory provision of the tele-working addendum/agreement, the situation of the overlapping of tele-working and posting needs more attention.

As we have mentioned above, for the time being, there is no relevant court practice on this issue, because the amendments are quite new.

However, if a tele-working agreement does not specify the place of tele-working, in our view, the tele-worker has the power to exclusively decide upon the place of work from where he/she will carry out his/her activities.

In this case, a logical conclusion would be that any temporary change by the employer of the place(s) of work selected by the tele-worker will be a case of “posting” under the Romanian Labour Code.

However, if a “mobility clause” is included in the employment agreement, and if the employer needs it, the employee should carry out his/her activity from several places.

From the point of view of benefits, in the case of posting, the employee is entitled to receive:

- The payment of transportation and accommodation expenses; and
- The payment of a posting indemnity.

In the case of tele-working, the tele-working agreement/addendum should contain the conditions under which the employer bears the expenses related to the carrying out of work in tele-working.

From a pay-roll perspective, every time a tele-worker is posted, the payment of the posting indemnity should be ensured for each such day, while in the case of the tele-working benefits due by the employer to the tele-worker, such benefit will be calculated on a pro-rata basis with the days of work carried out in tele-working.

For any further information and assistance with respect to the above and any other legal matters, please do not hesitate to contact us at: [sebestin@peterkapartners.ro](mailto:sebestin@peterkapartners.ro)

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