

EMPLOYEES' RIGHTS REGARDING THE PAYMENT OF SOME BENEFITS DERIVED FROM OTHER SOURCES THAN SALARY FUNDS

Adriana Georgetta MESEȘAN*

Résumé

Les droits des salariés concernant le paiement de certaines indemnités provenant d'autres sources que les fonds de salaires

Le contrat individuel de travail se caractérise par l'interconditionnement de deux éléments inséparables: la prestation du travail par le salarié, respectivement l'action de le salarier faite par l'embaucheur.

Dans certaines circonstances légalement établies, le salarié qui n'exécute pas son obligation fondamentale peut pourtant bénéficier d'un support financier payé d'autres sources que le fond de salaires de l'unité.

Par conséquent, les sommes ayant cette destination se présentent sous la forme de certaines indemnités, autres que celle déduites de la partie variable du salaire et elles s'acquittent des budgets du Fond national unique d'assurances sociales de santé et des assurances en cas de chômage.

Key words: *salaire, benefices, indemnités*

1. Introductory notions

Regarded as one of the legal elements characterizing the content of the individual employment contract, by the concept of "salary" we infer – according to Article 1 of the Convention of the International Labour Organization no. 95 of the year 1949 concerning the protection of the employee¹ - the remuneration or the earnings susceptible of being evaluated in money and established by the agreement of the parties or by national law, owed by the employer to the employee on the basis of an employment or a verbal contract, either for the work done or which is to be done, or for the

* Lecturer, PhD, The Faculty of Law of Cluj-Napoca, Christian University „Dimitrie Cantemir” Bucharest.

¹ Ratified by Romania by Decree no. 284, published in the Official Journal of Romania no. 81 of June 6, 1973.

services provided or which are to be provided.

The Romanian legislator has concentrated the definition of the salary in Article 154 par. (1) of the Labour Code, as being the compensation for the work done by the employee on the basis of the individual employment contract.

As in Article 38 par. (1) of the Constitution, the principle of the equalization for equal work of the salaries of men and women is recognized, this idea is resumed and individualized in the content of Article 6 par. (1) and Article 154 par. (3) of the Labour Code, according to which upon the establishing and awarding of the salary, any discrimination for criteria of sex, sexual orientation, genetic characteristics, age, national affiliation, race, colour, ethnicity, religion, political option, social origin, disability, family situation or responsibility, union affiliation or activity is forbidden.

As a consequence, the principle of equal treatment in the domain of salary payment is implicitly inferred – from the clauses of the collective employment contracts and then it is materialized in the content of the individual employment contracts, concluded without any difference between male and female employees.

Article 155 of the Labour Code enumerates as representing elements of the salary the following: the base pay, the benefits, the increments, as well as other additions.

The basic salary represents the main part of the total salary owed to an employee, taking into consideration, usually, the level of studies, the professional qualification and training, the importance of the position, the characteristics of the tasks and the professional competences.¹

It is according to this *fixed part* of the salary that the rest of the rights owed to the employees are calculated.

The benefits represent the amounts paid to the employees over the basic salary, with the purpose of compensating for the expenses that they need to make on the occasion of the fulfilment of some employment tasks or in other work conditions.

The salary increments and additions, just like the benefits, make up the variable part of the salary, because they are paid only proportionally with

¹ Al. Țiclea, A. Popescu, C. Tufan, M. Țichindelean, O. Ținca, *Dreptul muncii*, Rosetti, Bucharest, 2004, p. 548.

the individual performances of each employee, obtained by work, for the time when the activity is provided in certain different or special conditions (to compensate this way for the extra effort made or the high risk involved by the work) if the experience gathered during the seniority in work is materialized in the economic growth of the value of the work done.¹

But during suspension or after the termination of the individual employment contract, the employees have the right to benefit from certain amounts of money, also called 'benefits', granted with the title of compensation with the purpose of eliminating the effect of a damage suffered, as a result of the employees' absence.

It is the cases with this last sense that the following analysis also refers to.

2. Benefits paid from The Unique National Social Health Insurance Fund

According to Article 7 par. (1) of the Law no. 19 of March 27, 2000 concerning the public pension system and other social security rights², in the public pension system social security payments represent a replacement income for the total or partial loss of professional income, as a result of old age, accidents, illnesses, maternity or death, hereinafter referred to as insured risks.

Social security payments are granted under the shape of: pensions, benefits, assistance, other types of payments stipulated by the law, correlative with the obligations concerning the payment of social security contributions. Individualising only the social security payments included in benefits, we enumerate the following:

2.1. Maternity allowance. With the purpose of improving the social-economic balance of the family, by the insurance of material means for the bringing up of the child, but also for the diminution of the phenomenon of its abandonment, several norms have been adopted which converge – by their application – towards the obtaining of an efficient social protection of woman employees.

¹. P. Burloiu, *Economia muncii, probleme actuale*, Lumina Lex, Bucharest, 1993, p. 95.

² Published in the Romanian Official Journal, part I, no. 140 of April 1, 2000, with the subsequent amendments and completions.

Thus, by Emergency Ordinance no. 96 of October 14, 2003 concerning the protection of maternity in workplaces¹ the categories of employees have been established to whom it shall be applied, namely pregnant women or mothers, women in childbed or who are breast feeding, of Romanian citizenship or of another member state of the European Union and from the European Economic Space, or citizens of other states and stateless, having their domicile or residence in Romania, and who have work relationships or employment relationships with an employer.

Through these regulations the woman employee's biological moments are defined and which claim a distinct individualisation, as follows:

- the pregnancy period;
- the interval after the resuming of the activity as a result of the carrying out of the postnatal leave, but no later than 6 months from the date when she has given birth;
- after the resuming of the activity, in the conditions of the finishing of the postnatal leave, when the employee is breastfeeding the child.

Article 9 specifies that for a woman employee who is to be found in one of the cases presented and who carries out at the workplace an activity which presents risks for her health or safety or with repercussions on the pregnancy and breastfeeding, the employer has the obligation to modify it in a way that corresponds with the conditions and/or the work schedule or, if it is not possible, to reassign her to another workplace without risks for her health and safety, according to the recommendations of the occupational medicine physician or of the family physician, with the maintaining of the salary income.

Even more than that, Article 13 establishes that on the basis of the family physician's recommendation, the pregnant employee who cannot fulfil the normal work duration for health reasons, hers or the baby's, has the right to the reduction by one fourth of the normal work duration, with the maintaining of the salary income borne entirely from the employee's salary fund, according to the legal regulations concerning the public pension system and other social security rights.

If the employer, for objectively justified reasons, cannot fulfil the

¹ Published in the Romanian Official Journal, part I, no.750 of October 27, 2003, with the subsequent amendments and completions brought by the Law no. 25 of March 5, 2004 and Emergency Government Ordinance no. 158 of November 17, 2005

obligation mentioned above, the employees in the cases presented have *the right to a maternal risk leave* before the date of application for the maternity leave, established in accordance with the legal regulations concerning the public pension system and other social security rights (for those pregnant women) or after the date of coming back from mandatory postnatal leave (for the other cases) only in the situation where they do not request leave or benefit for child upbringing and care until the age of 2 or, in the case of the child with disabilities, until the age of 3.

Maternal risk leave may be granted, entirely or fractionally, for a period which cannot exceed 120 days, by the family physician or the specialist physician, who will issue a medical certificate in this sense, but which cannot be granted simultaneously with other leaves provided by the legislation concerning the public pension system and other social security rights.

According to Article 58 of the Methodological norms for the application of the provisions of Emergency Government Ordinance no. 158/2005 for social health insurance leave and benefits, approved by the order of the Health minister and of the president of the National Health Insurance Authority no. 60/32 of January 27, 2006¹, the leave certificates issued in the above conditions, for periods of at most 30 calendar days shall be approved by the occupational medicine physician.

The maternal risk leave and benefit are granted according to Article 31 par. (2) and (3) of the Law no. 19/2000 concerning the public pension system and other social security rights² without due contribution period condition, and their amount represents 75% of the calculation base established according to the provisions of Article 10 of the law, namely the average of the monthly incomes of the last 6 months out of the 12 months making up the contribution period, up to the limit of 12 minimum gross salaries monthly.

The amounts representing the maternal risk benefit are borne integrally from the budget of The Unique National Social Health Insurance Fund.

Government Emergency Ordinance no. 158 of November 17, 2005 concerning the conditions and the benefits of social health insurance³ refers – among others – to the right of the insured-employee, to *a leave for pregnancy and childbed*, according to Article 23 par.(1), for a period of 126 calendar

¹ Published in the Romanian Official Journal, part I, no. 147 of February 16, 2006

² Published in the Romanian Official Journal, part I, no. 140 of April 1, 2000, with the subsequent amendments and completions.

³ Published in the Romanian Official Journal, part I, no. 1074 of November 23, 2005.

days and which is granted, according to Article 24 par.(1), for a period of 63 days before birth and 63 days after birth, time when the individual employment contract is suspended de jure, according to Article 50, letter a) of the Labour Code, period when the employee receives *maternity allowance*.

Although the periods of time making up the maternity leave may be compensated, according to the physician's recommendation and the option of the beneficiary person, Article 2 letter g) of the Emergency Government Ordinance no. 96/2003 and Article 24 par. (2) of the Emergency Government Ordinance no. 158/2005 have instituted the minimum mandatory period of the childbed leave of 42 calendar days, within the total leave of 126 days.

The persons with disabilities who are insured benefit, upon request, of pregnancy leave starting from the 6th month of pregnancy.

Even in the situation of the stillborn child or in the situation where it dies during the period of the childbed leave, the maternity allowance is granted for its entire duration.

The monthly amount of the maternity allowance is of 85% from the calculation base representing the average of the monthly revenues of the last 6 months, out of the 12 months from which the contribution period provided by Article 8 of Emergency Government Ordinance n. 158/2005 is made up of and is borne integrally from the budget of The Unique National Social Health Insurance Fund.

It is true that subsequently, by the adoption of the Unique collective employment contract at the national level for the years 2007-2010¹, in the content of Article 66 it was established that in case the employee is in maternity leave, the unit will compensate, for a certain period, the difference between the individual base salary had and the legal benefit she has the right to.

The period for whose duration the compensation is granted shall be established through the collective employment contract at the unit level, but not less than 6 weeks, and the differences of salaries shall be granted from the salaries fund.

2.2. *The benefit, the incentive and the state allowance for child upbringing*

The dispositions of Article 51 par. (1) letter a) of the Labour Code mention the possibility of suspension of the individual employment contract, as an effect of the employee's own will, having as a purpose the upbringing

¹ Published in the Romanian Official Journal, 5th part, no. of January 29, 2007.

of the child up to the age of 2, or in the case of the child with disabilities, until the age of 3.

In order for the legal regulation of the situation, Emergency Ordinance no. 148 of November 3, 2005 was adopted concerning the support of the family for the upbringing of the child¹, and by which the category of the beneficiary persons is outlined as those employees who, during the last year prior to the birth of the child obtained for 12 months income from salaries, income from independent activities, income from agricultural activities subject to income taxation, according to the provisions of the Fiscal code.

These persons benefit from leave for the upbringing of the child until the age of 2, or in the case of the disabled child, until the age of 3 and a *monthly benefit*, established from January 1, 2007, to the amount of 600 lei.

During the period when the beneficiary persons have professional income subject to income tax, an incentive is granted, established since January 1, 2007 to the monthly amount of 100 lei, situation when the payment of the monthly benefit of 600 lei is suspended.

In the same time, starting from January 1, 2007, the amount of the state allowance for children provided by the Law no. 61/1993 concerning the state allowance was established to 200 lei monthly, in the situation of the children up to the age of 2, and respectively up to the age of 3 in the case of the child with disabilities.

The benefit or the incentive – such as they were presented, are cumulated with the allowance for children, as specified in Article 4 par. (2).

Optionally, either one of the natural parents of the child, but also one of the persons who have adopted the child, to whom the child has been entrusted for adoption, or who have the child in foster care or in emergency foster care, as well as the person who has been appointed guardian, with the exception of the professional maternal assistant² receive the benefit or the incentive provided in the ordinance.

In the situation of the persons mentioned above, with the exception of the parents, the granting of the money rights is done taking into account 12 months prior to the date when, as the case may be, the adoption was approved, the entrusting was carried out, the foster care or the guardianship was instituted.

¹ Published in the Romanian Official Journal, part I, no. 1008 of November 14, 2005.

² Disposition modified by point 3 of Article I of the Law no. 7 of January 9, 2007, published in the Romanian Official Journal, part I, no. 33 of January 17, 2007.

The granting of the rights with a view to the upbringing of the child shall be done in the situation where the applicant fulfils cumulatively the following conditions:

- is a Romanian, foreign citizen or stateless;
- has, according to the law, the domicile or residence on the territory of Romania;
- lives together with the child/children for whom he/she requests the rights and handles their upbringing and care.

The requests accompanied by justifying documents are handed in, as the case may be, at the city hall of the administrative-territorial unit where the applicant has his/her domicile or residence.

In their turn, the city halls have the obligation to transmit the requests (with the justifying documents) to the county work, social solidarity and family departments, respectively to the work, social solidarity and family department of the municipality of Bucharest, called territorial departments and who solve them, by decision of admission, or as the case may be, of rejection, issued by the executive manager, and which may be contested in the conditions of the Law of the administrative legal department no. 554/2004.

The rights representing benefit and incentive *are incumbent and paid*:

a) starting from the day following the one where the maternity leave ceases, according to the law, if the request is handed in within 60 business days from that date;

b) starting from the child's birth date, if the request is handed in within 60 business days from that date, in the case of the persons who do not fulfil the conditions, according to the law, for the granting of the maternity leave and of the afferent benefit;

c) starting from the date of the adoption, of the institution of the guardianship, of the placement or entrusting, if the request is handed in within 60 business days from the date of their approval or, as the case may be, of the institution of the child protection measures;

d) from the date of handing in of the request, for all the other situations, including for the case where the request was handed in after the deadlines provided at letters a), b) and c).

The payment of the state allowance for children is made starting with the month following the one when the child was born.

In case the child turned 2, respectively 3, in the case of the child with disabilities, or is deceased, *the payment of the rights stops*, starting from the month following the one when the event occurred.

The payment of the rights provided in the ordinance *is suspended* starting with the month following the one when:

- a) the beneficiary's parental rights are terminated;
- b) the beneficiary is removed, in accordance with the law, from the exercising of the guardianship ;
- c) the beneficiary no longer fulfils the conditions provided by the law in order to entrust the child for adoption;
- d) the beneficiary no longer fulfils the conditions provided by the law with a view to the maintaining of the foster care measure;
- e) the beneficiary executes a punishment depriving him/her of freedom or is in preventive arrest for a period longer than 30 days;
- f) the child is abandoned or checked into a public or private sheltering institution;
- g) the beneficiary is deceased;
- h) it is found that for a period of 3 consecutive months returned money orders are recorded.¹

The payment of the benefit for child upbringing is suspended starting from the day following the one when the beneficiary obtains professional income subject to income tax according to the Law no. 571/2003, with the subsequent amendments and completions.

But its payment shall not be suspended if the beneficiaries receive different amounts on the basis of the law, of the collective employment contract, or of the individual employment contract, granted during the period of the child upbringing leave, others than the ones resulting from the carrying out of the professional activity.

The payment of the incentive is suspended starting from the day following the one when the beneficiary no longer obtains professional income

¹ Letter h) was introduced by point 8 of Article I of the Law no. 7 of January 9, 2007, published in the Romanian Official Journal, part I, no. 33 of January 17, 2007.

subject to income tax, and if he or she no longer fulfils the cumulative granting conditions demanded, the payment of the rights is suspended starting from the day following the one when the conditions are no longer fulfilled.

It is important to mention that the period when a person receives the benefit constitutes a period assimilated to the contribution period with a view to the establishing of the rights provided by the Law no. 19/2000 concerning pension, and for the same interval of time the individual contribution to social health insurance is calculated by the application of the quota provided by the law to the amount representing twice the minimum national base salary, guaranteed in payment, and is paid to the state budget.

2.3. The benefit for the care of the sick child

On the basis of Article 51 letter b) of the Labour Code and of Article 26 of the Emergency Ordinance no. 158/2005, the individual employment contract of an employee may be suspended at his/her own initiative, having as a consequence the start of the right to leave and to receive the benefit for the care of the sick child up to 7 years old, and in the case of the child with disabilities, for intercurrent diseases, until the age of 18.

The beneficiary of the benefit may be, optionally, one of the parents, if the applicant has fulfilled the minimum contribution period and namely of one month carried out within the last 12 months prior to the month for which the medical leave is granted.

The same rights are recognised also to the insured person who, in the conditions of the law has adopted, has been appointed legal guardian, has had children entrusted with a view to adoption or in foster care.

The benefit for the care of the sick child up to the age of 7 or of the child with disabilities with intercurrent diseases up to the age of 18 is granted on the basis of the medical leave certificate issued by the family physician and of the certificate for persons with disabilities, issued in the conditions of the law.

According to the dispositions of the 5th Section, and respectively of Article 50 and 53 of the Methodological Norms for the application of the provisions of Emergency Government Ordinance no. 158/2005 concerning leaves and social health insurance benefits, approved by the Order of the health minister and of the president of the National Health Insurance Authority no. 60/32 of January 27, 2006, the family physician has the right to

grant medical leave for sick child care, with a duration of at most 14 calendar days, in one or several stages, for the same disease.

The attending physician from the specialty medical unit has the right to grant medical leave for sick child care, with a duration of at most 30 calendar days.

Also, one of the parents, the legal guardian, the insured person to whom the child has been entrusted for upbringing and education or in family placement benefit from the same medical leave, for the period when he or she accompanies the child abroad for the duration of hospitalisation for diseases which cannot be treated inside the country.

In this situation the medical certificate is issued by the attending physician, with the approval of the public health departments, on the basis of the proof certificates translated and authenticated, in the conditions and up to the maximum durations provided by the law, but not later than 15 days after the return date in the country.

The duration of granting of the benefit is of at most 45 calendar days per year for one child, with the exception of the situations when the child was diagnosed with contagious infectious diseases, neoplasia, is immobilised in plaster bandage, is undergoing surgical interventions, and the duration of the leave in these cases shall be established by the attending physician, and after the exceeding of the period of 90 days, by the specialist physician, with the approval of the social security expert physician.¹

The gross monthly amount of the benefit is set to 85% of the calculation basis resulting as the average of the monthly income for the last 6 months of contribution, up to the limit of 12 minimum national gross salaries.

2.4. Benefit for paternal leave

Another possible form of suspension of the individual employment contract from the employer's initiative, corresponding to the Article 51 letter c) of the Labour code, is represented by the recognized right of the employed father to participate effectively to the care of the newborn baby, according to the Law no. 210 of December 31, 1999 concerning paternal leave.²

¹ The present content of the Article 29 of Emergency Government Ordinance no. 158/2005 has been modified by the Law no. 399/2006 published in the Romanian Official Journal, part I, no. 901 of November 6, 2006.

² Published in the Romanian Official Journal, part I, no. 654 of December 31, 1999.

According to this norm the holder of the right, if he is insured in the system of state social insurance system, has the right to a *paid paternal leave* of 5 business days, and if he has obtained the graduation certification of an infant care course, its duration is increased to 10 business days, benefit which is only granted once.

Paternal leave is granted, upon request, within the first 8 weeks from the birth of the child justified with its birth certificate, from which the quality of father of the beneficiary should result.

The dispositions of Government Decision no. 244 of April 1, 2004 for the approval of the methodological norms for the application of the Law of Paternal Leave no. 210/1999¹ mention that the request is to be handed in to the unit's management – either natural person or corporate body – where the beneficiary carries out his activity, irrespective of its modality of organisation and financing, with the only condition that the employee be insured in the system of state social security system.

The benefit for paid paternal leave, equal to the salary afferent to the respective business days is calculated on the basis of the gross salary realised, including the increments and additions to the base salary, amount that is paid from the unit's salary fund and is included in the employee's taxable revenues.

The methodological norms specify the notion of the *infant care course* – held by the family physician, during the mother's pregnancy period or after the birth of the child, consisting of the presentation of elementary theoretical and practical notions necessary for the care of the small child, with a view to the father's participation in its effective care.

As a result of the checking of the notions acquired, the family physician shall issue the graduation certificate of the infant care course and which consists of the proof document by which it is found that the elements mentioned above have been assimilated and contains the personal data from the father's identity card, the workplace, the date of issue, the family physician's signature and stamp.

A special regulation is meant for those situations where the child's mother lost her life during childbirth or during the childbed period.

In this case, the granting of the childbed leave not carried out shall be done by the management of the unit where the father carries out his activity, *upon his request*, accompanied by the proving documents concerning the

¹ Published in the Romanian Official Journal, part I, no. 150 of April 11, 2000.

quality of father of the newborn baby, as well as the death certificate of the mother and, as the case may be, of the childbed leave certificate of the mother in case such a document has been issued to her.

During the period when the father completes the childbed leave not completed by the deceased mother, he has the right to a *benefit* granted by the unit where he carries out his activity, its amount being calculated in accordance with the legal stipulations, in accordance with the type of benefit the father chooses and which shall be paid from the salary fund of the beneficiary's unit.

The solution offered by the legislator on the right of the newborn baby's father to subrogate in the deceased mother's childbed leave calls for a few emphases:

- for the 5 plus 10 days representing the total duration of the paternal leave, the source of payment is represented by *the salaries fund of the unit*, as the benefit granted represents the gross salary made including the increments and additions, and the amount obtained is included in the employee's taxable revenues;
- if the father of the newborn child takes over the deceased mother's right to childbed leave, the dispositions of Article 9 of Government Decision no. 244/2004 underline his right to a benefit granted by his unit. The disposition, according to which the amount of the benefit in this case is calculated according to the legal provisions, according to the type of benefit the father chooses, for which it indicates also the source of the payment as being the unit's salary fund, may generate confusions.
- Thus, on the basis of Article 118-120 of the Law no. 19/2000 and Article 23-25 of the Emergency Government Ordinance no. 158/2005, the insured employees benefit from childbed leave for a period of 63 days after birth and from maternity allowance in amount of 85% from the calculation base provided by these norms, representing a mandatory contribution period for the insured person, the amount being integrally borne from the budget of state social security.
- In the hypothesis provided by Government Decision no. 244/2004, the father of the newborn child could use the benefit belonging to the deceased woman employee – although the father does not have

his own contribution period to the mother's social security fund; the duration of the payment may be situated from the moment of the mother's death on the entire 63 day interval recognised as childbed leave or the rest of the leave remained uncompleted, and the supply source of the benefit shall be changed, from the budget of state social security to that of the salaries fund.

With the purpose of clarifying the legal system regulating only at the level of hypothesis, it is imposed that the texts commented be correlated so as to avoid the budgetary load of the employing unit of the employee benefitting from the right of paternal leave, by the exceeding of the granting interval, namely, of 15 business days.

2.5. Benefit for temporary work incapacity

In accordance with the dispositions contained in Article 5 and in the 1st Section (Article 100-102) of the Law no. 19/2000 concerning the public pension system and other social security rights, so as it has been amended and completed, in the public system the insured persons benefit from medical leave and benefit for temporary work incapacity, if they prove this state with a medical certificate issued according to the law.

The benefit for temporary work incapacity is borne as follows:

- a) by the employer, according to the number of employees had on the date of emergence of the temporary work incapacity, as follows:
 - up to 20 employees, from the first day until the 7th day of temporary work incapacity;
 - between 21-100 employees, from the first day until the 12th day of temporary work incapacity ;
 - more than 100 employees, from the first day until the 17th day of temporary work incapacity;
- b) by the budget of state social security, starting from:
 - the first day of temporary work incapacity, in the case of employees who benefit from monthly money rights, borne from the budget of unemployment insurance, in the conditions of the law; the persons who have the quality of sole administrator; associates, silent partners or shareholders; administrators or managers who have concluded an administration or management

contract, members of the family association, persons authorised to carry out independent activities, persons employed in international institutions, if they are not insured by these, other persons making revenues from professional activities. The persons who find themselves in two or more of the situations provided above are also included in the same category. All the persons mentioned above and who wish to complete their insured income, as well as the persons who are not in the situations mentioned above may also be insured in the public system, on the basis of social security contract¹.

- the day following the ones borne by the employer, until the date of ceasing of the temporary work incapacity or retirement.

The benefit for temporary work incapacity caused by occupational diseases or work accidents is borne differentially by the employer or from the budget of state social security, according to the categories of personnel mentioned, from the first day of temporary work incapacity and until the date of its ceasing or retirement.

Emergency Government Ordinance no. 158/2005 concerning leaves and health insurance benefits, through Article 1² extends the sphere of *insured persons* also to the persons who conclude a social security contract for maternity leaves and benefits and leaves and benefits for the care of the sick child, in the conditions where they have begun the contribution period until January 1, 2006 and to retired people who had activity outside some elective functions, the naming within certain authorities, for the duration of the mandate, of the cooperating members. 3rd degree invalidity retired persons and persons retired for blindness who are members of a family association or have been authorised to carry out independent activities benefit from the same rights.

Starting from January 1, 2006, *the contribution quota* for leaves and benefits, destined exclusively for the financing of expenses with the payment – among others – of the medical leaves and of the benefits for temporary

¹ Modified Article I point 2 of the Emergency Government Ordinance no. 91 of September 26, 2007 for the amendment and completion of some norms from the domain of social security, published in the Romanian Official Journal, part I, no. 901 of November 16, 2006.

² Modified by the Law no. 399/2006, published in the Romanian Official Journal, part I, no. 901 of November 16, 2006.

work incapacity, caused by usual diseases or accidents outside work, is of 0.75% applied to the salaries fund or, as the case may be, to the rights representing the unemployment benefit, on the revenues subject to income taxation or on the revenues contained in the social security contract concluded by the persons who conclude an insurance contract for maternity leaves and benefits, as well as the care of the sick child, in the conditions where they have begun the contribution period until January 1, 2006 and is paid to the budget of the National Unique Social Health Insurance Fund.

The contribution period in the health insurance system is made up of the addition of the periods:

- a) for which the contribution for leave and benefits has been paid by the employer, or, as the case may be, by the insured person, respectively by the insurance fund for work accidents and occupational diseases or the budget of unemployment insurance ;
- b) for which the payment of the health insurance contribution is borne from other sources, according to Article 213 par. (2) letter a) of the Law no. 95/2006¹, with the subsequent amendments and completions;
- c) for which, until the date of coming into force of this emergency ordinance, the payment of the health insurance contribution has been made from other sources, according to Article 6 par. (2) letter b) and d) from Emergency Government Ordinance no. 150/2002².

The periods when the insured person receives the leaves and benefits provided in this emergency ordinance are assimilated to the contribution period in the system of social health insurance, as well as the periods when the insured person has benefited from invalidity pension or has attended the day courses of academic education, organised according to the law, for the normal duration of the studies in question, in the conditions of their graduation, according to the dispositions of Article 8 of Emergency Government

¹ Published in the Romanian Official Journal, part I, no. 372 of April 28, 2006, subsequently amended and completed.

² Published in the Romanian Official Journal, part I, no. 838 of November 20, 2002, repealed by the Law no. 95/2006 concerning the reform in the domain of health, mentioned above.

Ordinance no. 158/2005 and Article 12 of the Order of the Health Minister and of the President of the National Health Insurance Authority no. 60/32 of January 26, 2006 for the approval of the Application norms of the provisions of Emergency Government Ordinance no. 158/2005.¹

The insured persons have the right to leave and benefit for temporary work incapacity *without conditions of contribution period*, in the case of medico-surgical emergencies, of tuberculosis, of contagious infectious diseases, expressly enumerated, of neoplasia and AIDS.

The calculation basis of the benefits provided for all the leaves contained in Article 2 of the ordinance is determined as an average of the monthly revenues of the last 6 months on the basis of which, according to the law, the contribution for leaves and benefits is calculated, from the 12 months that make up the contribution period.

In the situation when *upon the establishing of the 6 months* making up the calculation base of the benefits, the periods assimilated to the contribution period mentioned are used, the revenues taken into consideration come from all the sources which have made up the contribution period.

If *the contribution period is shorter than one month*, for the cases of the medico-surgical emergencies, of tuberculosis, of contagious infectious diseases, of neoplasia and AIDS, but also of maternal risk – the calculation base of the benefit is constituted by the monthly income of the first month of activity for which the contribution was established to be paid.

From the dispositions of Emergency Government Ordinance no. 158/2005 and the Application norms of its provisions – so as they were adopted by Order no. 60/32 of January 27, 2006 of the Health Minister and of the President of the National Health Insurance Authority, *the duration of granting of the benefit for temporary work incapacity* is of at most 183 days in an interval of 1 year, calculated from the first day of granting.

Family physicians have the right to issue medical leave certificates for temporary work incapacity with a duration of at most 14 calendar days, in one or more stages, whose cumulated duration cannot exceed 45 calendar days in the last year, calculated from the first day of illness, irrespective of its cause.

After the totalisation of the 45 calendar days granted by the family physician, the issuing of the certificates shall only be done by the attending physician from the specialty outpatient care department or hospital, in case of

¹ Published in the Romanian Official Journal, part I, no. 147 of February 16, 2006.

hospitalisation, with the situation within the maximum durations provided by the law.

In situations thoroughly motivated by the possibility of recovery, the chief physician or, as the case may be, the specialist physician in the main invalidating disease proposes the extension of the medical leave over 183 days, by at most 90 more days – according to the procedures established by the National Pensions Authority and Other Social Security Rights together with the National Health Insurance Authority, with the purpose of avoiding invalidity retirement and the maintaining in activity.

The duration of granting of the leave and, implicitly, of the benefit for temporary work incapacity *is longer* in the case of some special diseases and is differentiated as follows:

- a) one year, in the interval of the last 2 years, for pulmonary tuberculosis and some cardiovascular diseases, established by the National Health Insurance Authority, with the agreement of the Health Ministry;
- b) one year, with a right to extension up to 1 year and 6 months by the expert physician of social security, in the interval of the last 2 years, for meningeal, peritoneal and urogenital tuberculosis, including that of the adrenal glands, for AIDS and neoplasia, in accordance with the stage of the disease;
- c) of one year and 6 months, in the interval of the last 2 years, for operated pulmonary and osteoarticular tuberculosis;
- d) 6 months, with the possibility of extension up to at most 1 year, in the interval of the last 2 years, for other forms of extrapulmonary tuberculosis, with the approval of the social security expert. (Article 24 par. (3) of the Application Norms).

The social security expert physician decides, as the case may be, the resuming of the activity in accordance with the professional training and aptitudes or invalidity retirement.

The monthly amount of the benefit for temporary work incapacity is determined by the application of the percentage of 75% on the calculation basis – so as it was presented explicitly above, for the business days from the durations expressed in calendar days of temporary work incapacity, calculated from the first day of incapacity and is paid integrally from the Unique National Social Health Insurance Fund.

2.6. The benefit for the prevention of illnesses and the recovery of the work capacity

According to Article 18-22 of the Emergency Government Ordinance no. 158/2005, with the purpose of preventing illnesses and recovering the work capacity, the insured persons may receive:

- a) *Benefit for the reduction of the work time.* If the employee, for health related reasons, can no longer carry out the normal work duration, upon the proposition of the attending physician, with the approval of the social security expert physician, he/she has the right to a benefit for *the reduction of the work time, by one fourth*. The benefit is granted for at most 90 days during the last 12 months prior to the first day of leave, in one or more stages. The monthly gross amount of the benefit for the reduction of the work time is equal to the difference between the calculation base established according to this ordinance and the gross salary income earned by the insured person by the reduction of the normal work time, without exceeding 25% from the calculation base and shall be borne integrally from the budget of the Unique National Social Health Insurance Fund;
- b) *leave and benefit for quarantine* is granted to all insured persons to whom it is forbidden to continue their activity due to a contagious disease, for the duration established through the certificate issued by the public health authority. The monthly gross amount of the benefit represents 75% of the calculation basis provided by this ordinance, being paid integrally from the budget of the Unique National Social Health Insurance Fund;
- c) *balneary treatment, in accordance with the individual recovery program.* Those employees who are in temporary work incapacity for a *period longer than 90 consecutive days* benefit from balneary treatment and recovery of the work capacity, on the basis of *the individual recovery program* drawn up by the specialist physician, with the mandatory approval of the social security expert physician, being structured in stages. The individual recovery program is *mandatory* and is carried out in specialised health units in contractual relationship with the health insurance authorities, for a duration of 15-21 days. After each stage provided in the individual recovery

program, the insured persons are submitted to medical re-examination, so that according to its results the social security expert physician can propose to the attending physician the updating of the individual recovery program or, as the case may be, recommend the resuming of the professional activity or propose invalidity retirement. The costs of the balneary treatment, as well as those of the recovery actions of the work capacity, are borne from the budget of the Unique National Social Health Insurance Fund in the conditions provided by the Framework contract concerning the conditions of granting medical assistance within the health insurance system and by the methodological norms of its application.

Observations:

1. In the hypothesis of the reduction of the work time, for health related reasons, as the employee does not carry out the normal work duration, the employer shall be forced to proceed to the modification of the individual employment contract and to dispose, according to Article 41 par. (3) of the Labour Code the changing of at least two essential elements, namely the salary and the work time, mentioning expressly the duration for which the measure is being taken, but also the indication of the determining reason and of the benefit owed.

2. For the case related to the recovery of the work capacity through balneary treatment, the legislator omitted the indication of the financing source of the benefit and in Article 21 par. (6) it specifies that ‘the payment of the benefits is not due for the periods when the insured person, for reasons which are his or her own fault, does not fulfil his or her obligation to follow and respect the individual recovery program’.

As it is expressly mentioned that the costs of the balneary treatment and those of the actions for the recovery of the work capacity shall be borne from the budget of the Unique National Social Health Insurance Fund, naturally the benefits for the respective periods shall also be paid from the same budget.

If, by the phrase “the payment of the benefits owed to the employee” the ones representing “the cost of the balneary treatment and of the work capacity recovery actions” are also absorbed, the use of only one of these would have been imposed in order not to create confusions.

The vagueness probably comes from the wording of Article 21-28 of the Law no. 346 of June 5, 2002 concerning work accidents and occupational diseases¹, of Section 1, representing “The works and services for medical rehabilitation and the recovery of the work capacity.”

2.7. The benefit for professional requalification and reconversion

According to Article 1 of the Law no. 346/2002 *the insurance for accidents and occupational diseases* consists of an insurance for persons – which is part of the system of social security, is guaranteed by the state and contains specific reports by which the protection of the employees is insured against the diminution or the loss of the work capacity and their death as a result of work accidents and of occupational diseases.

For the explanation of the terms mentioned above, the Law no. 319 of July 14, 2006 concerning occupational security and health² specified for their understanding in Article 5 letters g) and f) and the following:

- a) work accident – the violent damaging of the body, as well as acute occupational intoxication, which take place during the work process or during the fulfilment of the work tasks and which cause temporary work incapacity of at least 3 calendar days, invalidity or death;
- b) occupational disease – disease produced as a result of the exercising of a job or of a profession, caused by harmful physical, chemical or biological agents characteristic to the workplace, as well as by the overstraining of different organs or systems of the body, in the work process.

From the area of insurance works and services for work accidents and occupational diseases and which are granted by the insurer – according to Article 29 – upon the request of the insured persons who, although they haven't lost their work capacity completely, can no longer carry out the activity they have qualified for, as a result of a work accident or of a professional disease.

In this sense, the insurer takes in its charge the expenses for the following works and services for professional rehabilitation and reconversion:

¹ Published in the Romanian Official Journal, part I, no. 454 of June 27, 2002.

² Published in the Romanian Official Journal, part I, no. 646 of July 26, 2006.

- a) the expenses concerning medical and psychological services for the appreciation of the physical and mental state and of the aptitudes with a view to professional reconversion;
- b) the cost of qualification or of reconversion courses;
- c) the payment of a benefit for the duration of the qualification and reconversion courses.

According to the dispositions of Order no. 450/825 of June 6/July 5, 2006 of the Minister of Labour, Social Solidarity and Family and of The Public Health Minister, for the approval of the Methodological Norms for the application of the Law no. 346/2002 concerning insurance for work accidents and occupational diseases, with the subsequent amendments and completions¹, with a view to the approval of the participation in the courses of professional requalification and reconversion, the insured person must hand in a request at the headquarters of the territorial pension authority where he or she has domicile.

After the drawing up of the personal file – containing the documents punctually provided by this norm and after the appreciation of the physical, mental and aptitude state of the insured person, by the specialised and authorised service providers for the stimulation of the workforce occupation and, implicitly, the proposals connected to the activities he or she can carry out, the executive manager of the territorial pension authority admits or rejects the request, by motivated decision.

In case of admission, the decision shall contain proposals concerning one or more courses of professional reconversion, their provider, the training program, as well as the graduation modality, document which is communicated to the insured person.

The insured person may accept the proposals, being communicated the professional training provider, the place and date of starting of the course, and in case of refusal the insured person loses the right to services concerning professional rehabilitation and reconversion.

The training program established by the organiser is mandatory for the insured person, and during the period of the courses the insured person receives a benefit, granted monthly, and representing 70% of the gross base salary of the insured person, at the date of happening of the work accident or of the occupational disease.

¹ Published in the Romanian Official Journal, part I, no. 708 of August 17, 2006.

The insured person has the right to a single free final examination of the professional rehabilitation or reconversion course.

In the situation where the insured person does not respect the training program for reasons imputable to him, the organizer of the course notifies immediately the territorial pension authority, which stops the payment of the benefit, dispositions not applicable in case of force majeure.

The benefit for the duration of the professional qualification or reconversion is granted, only if the insured person does not receive in parallel benefit for temporary work incapacity or 3rd degree invalidity pension.

2.8. The benefit for the temporary passing to another workplace and the benefit for the reduction of the work time

By Article 48 of the Labour Code the recognised legal framework is created for an employer, who may modify temporarily the place and the type of the work, as disciplinary sanction or as a protection measure of the employee, in the cases and in the conditions of the law.

As a protection measure of the employee, Article 110 of the Law no. 19/2000 concerning the public pension system and other social security rights provides that the insured persons who, due to an occupational disease or a work accident can no longer work in the conditions from the workplace prior to the production of the risk, may temporarily pass to another work.

If at the new workplace the employee makes a monthly gross salary income inferior to the average of the monthly incomes of the last 6 months previous to the production of the risk, which have constituted the calculation base of the social security contribution in the months in question, he or she is granted *a benefit for the temporary passing to another work*.

The benefit for the reduction of the work time with one fourth of the normal duration is granted to the employees who, due to an occupational disease or to a work accident, for health related reasons, can no longer carry out the normal duration (Article 111).

In these cases the benefit is granted upon the proposal of the attending physician, with the approval of the social security expert physician, for at most 90 days out of a calendar year, in one or several stages.

These normative dispositions are to be found, up to perfect identification with the content of Article 40-42 par. (1) of the Law no. 346 of

June 5, 2002 concerning insurance for work accidents and occupational diseases, with the subsequent amendments and completions.

According to Order no. 450/825 of June 6 /July 5, 2006 of the Minister of Labour, Social Solidarity and Family and of The Public Health Minister, for the approval of the Methodological Norms for the application of the Law no. 346/2002, the insured person may resume his or her activity at the old workplace or may realise the normal work program before the expiry of the maximum period of reduction of the work program provided by the legislation in force, with the approval of the social security expert physician, the employer having the obligation to announce the territorial pension authority, within at most 5 days, about the modification in the situation of the insured person (Article 57 par.(1) and (2)).

If by the Law no. 346/2002 and its Application Norms, the amount of the benefits for temporary passing to another workplace or for the reduction of the work time equals the difference between the average of the salary revenues of the last 6 months and the gross monthly salary income made by the insured person at the new workplace or by the reduction of the normal work time, without exceeding 25% of the calculation base, Article 112 par. (2) of the Law no. 19/2000 provides as calculation element, the calculation base established according to Article 99 par. (1), namely the average of the monthly revenues of the previous 6 months for which the individual contribution to social security was paid, or as the case may be, of the 12 months that made up the contribution period – way of calculation valid in the cases analysed.

It is possible in practice, for the difference between the two calculation elements not to lead to very large differentiations between the values resulted, but for acuity, the fitting of the texts is required.

Observations:

Proceeding to the comparative analysis of the text provided by Article 18 letter a) and 19 of the Emergency Government Ordinance no. 158/2005, of Article 111 of the Law no. 19/2000 with that of Article 41 and 42 of the Law no. 346/2002 it is found that these present a unique notion, and namely *the benefit for the reduction of the work time*, characterised by the uniqueness of the elements characterising it in the three normative acts.

3. Benefits paid from the unemployment insurance budget

By the adoption of the Law no. 76 of January 16, 2002 concerning the system of unemployment insurances and the stimulation of the workforce occupation¹, the measures have been regulated for the carrying out of the strategies and policies drawn up with a view to the protection of persons for the risk of unemployment and the insurance of a high level of adaptation of the workforce to the requirements of the labour market.

3.1. Categories of beneficiaries

The beneficiaries of the rights conferred by the law in the sense of Article 16 are those persons in search of a workplace, in one of the following situations:

- a) have become unemployed, not having a workplace, are not making revenues or are making from authorised activities according to the law smaller revenues than the unemployment benefit they would have the right to according to this law;
- b) could not occupy a workplace after the graduation of an education institution or after finishing the military service. Assimilated to these persons are also those who fulfil – according to Article 17 par. (2) the following conditions: are graduates of education institutions, at least 16 years of age, who within a period of 60 days from graduation were not able to find work according to their professional training; are graduates of special schools for persons with disabilities or are graduates of education institutions, at least 16 years of age, who within a period of 60 days from graduation were not able to find work according to their professional training; are persons who, before the military service, were not employed and who within a period of 30 days from demobilisation were not able to find work;
- c) occupy a workplace and, for various reasons, desire its changing;
- d) have obtained the status of refugee or another form of international protection, according to the law;
- e) foreigners who were employed or obtained revenues in Romania according to the law²;

¹ Published in the Romanian Official Journal, part I, no. 103 of February 6, 2002.

² Such as it was modified by Article I point 1 of the Law no. 107/2004.

- f) were not able to find a workplace after repatriation or freeing from detention.

3.2. Cases

With a view to the establishing of the right to unemployment benefit, *the unemployed* provided above, are the persons who can be found in one of the following situations:

- a) their individual employment contract or temporary employment contract was terminated for reasons not imputable to them;
- b) their employment relationships have been terminated for reasons not imputable to them;
- c) their mandate for which they were appointed or elected has ended, if previously they were not employed or if the resuming of the activity is no longer possible due to the final termination of the employer's activity;
- d) the duration for which soldiers were employed on the basis of contract expired or their contracts were terminated for reasons not imputable to them;
- e) their employment relationship as cooperating member ceased, for reasons not imputable to them;
- f) have concluded an unemployment insurance contract and are not making revenues or are making from activities authorised according to the law revenues smaller than the unemployment benefit they would have the right to according to the law;
- g) have ceased their activity as a consequence of retirement for invalidity and who subsequently regained their work capacity and were not able to find work;
- h) their work or employment relationships ceased, for reasons not imputable to them, during the period of their suspension, according to the law;
- i) recalled by the Law no. 107/2004;
- j) the reintegration in work, disposed by final court order, is no longer possible at the units where they were employed previously, due to the final ceasing of the activity, or at the units who have taken over their assets;

- k) their activity carried out exclusively on the basis of civil convention has been terminated. In fact this last example no longer has applicability since labour legislation recognises the validity of a legal work relationship concluded only in the form of the individual employment contract.

3.3. The constitution sources of the budget

The budget of unemployment insurances is constituted from the contributions of the employers in quota of 2.5% applied on the fund of total monthly gross salaries earned by the persons insured mandatorily, by the effect of the law, from the individual contributions of these persons, established in quota of 1% applied on the gross monthly base salary or as the case may be, for the persons insured who earn monthly gross revenues and are not found in the cases expressly provided by Article 19 of the law. Also, the contributions owed by the persons who conclude unemployment insurance contracts – other than the ones insured mandatorily (Article 20) also represent revenues to the budget of unemployment insurances, as well as the amounts coming from other sources, including external financing.

3.4. The granting conditions of the unemployment benefits

From the financial sources constituted within the budget of unemployment insurance, firstly *the payment of the unemployment benefits* is covered for those unemployed persons who fulfil the following conditions:

- a) have a contribution period of at least 12 months from the last 24 months prior to the registration date of the request;
- b) are not making revenues or are making from activities authorized according to the law revenues smaller than the unemployment indemnity;
- c) do not fulfil the retirement conditions, according to the law;
- d) are registered at the workforce occupation agencies on whose territory they have their domicile or, as the case may be, their residence, if they had their last workplace or they made revenues in that locality.

According to Article 39, the unemployment benefit is granted to unemployed people for periods of time established differentially, according to the contribution period, as follows:

- a) 6 months, for the persons with a contribution period of at least 1 year;
- b) 9 months, for the persons with a contribution period of at least 5 years;
- c) 12 months, for the persons with a contribution period longer than 10 years.

3.5. The value of the unemployment benefit

The amount of the unemployment benefit consisting of an amount granted monthly and differentially, according to the contribution period; representing 75% from the minimum national gross base salary guaranteed in payment for those persons with a contribution period of at least one year and, separately, from the amount provided above, to which an amount is added calculated by the application on the gross monthly base salary of the last 12 months of contribution period, of a percentage quota differentiated according to the contribution period. The differentiated percentage quotas in accordance with the contribution period, provided above are:

- a) 3%, for the persons with a contribution period of at least 3 years;
- b) 5%, for the persons with a contribution period of at least 5 years;
- c) 7%, for the persons with a contribution period of at least 10 years;
- d) 10%, for the persons with a contribution period of at least 20 years.

The unemployment benefit is granted to the graduates of the education institutions, at least 16 years of age, who, within a period of 60 days from graduation were not able to find work according to their professional training, to the graduates of special schools for persons with disabilities at least 16 years of age, who were not able to find work according to their professional training, as well as to persons who, before the military service, were not employed and who within a period of 30 days from demobilisation were not able to find work.

In these cases, the non-taxable monthly sum whose amount represents 50% of the minimum national gross base salary, in force on the date of its establishing, and for education graduates, shall be paid only once for each form of education graduated.

3.6. Obligations of the beneficiaries

Correlatively to the granting of the unemployment benefit, the beneficiary persons *have the obligations* to appear monthly, on the basis of

scheduling or whenever they are requested, at the agency for workforce occupation where they are registered, to receive support with a view to their employment; to communicate within 3 days to the agency for workforce occupation where they are registered any modification of the conditions which have led to the granting of the rights; to participate at the services for the stimulation of occupation and of professional formation offered by the agency for workforce occupation where they are registered and to look for a workplace actively.

The dispositions of the law are sanctioning, in the sense of the exclusion from the benefit of the payment of the unemployment benefit of those persons who, on the date of request of the right refuse a workplace in accordance with their preparation or level of studies, situated at a distance of at most 50 km from the domicile locality, or refuse the participation to services for the stimulation of occupation and of professional training offered by the workforce occupation agencies.

3.7. The suspension and the resuming of payment of the unemployment benefit

Article 45 of the Law no. 76/2002 also regulates the possibility of suspension of the unemployment benefits granted to the beneficiaries, in the following situations:

- a) failure to appear on the date provided according to the schedule or on that of the requesting – at the agency for workforce occupation where they are registered;
- b) during the fulfilment period of the military service;
- c) on the date of employment, according to the law, with individual employment contract for a period of at most 12 months;
- d) on the date of leaving the country for a period shorter than 3 months, upon request of the person;
- e) for the period while he or she is arrested preventively or for the execution of a punishment depriving of freedom of up to 12 months;
- f) on the date of retirement for invalidity;
- g) for the period of granting of the benefit for temporary work incapacity, of the maternity allowance and of the benefit for the upbringing of the child until the age of 2, and respectively 3 in the case of the child with disabilities;

- h) for the period of temporary work incapacity longer than 3 days due to accidents happening during qualification, requalification, improvement courses or, as the case may be, of other forms of professional training, during and due to professional practice;
- i) for the period of granting of compensatory payments, according to the law.

The resuming of payment is possible, in the first case from the date of handing in of the beneficiary's request, but not later than 60 calendar days from the date of suspension, and for the other situations, also upon handing in of the request, but not later than 30 calendar days from the date of ceasing of the situation which has led to the suspension.

3.8. The situations leading to the termination of the payment of unemployment benefits

And, finally, *the termination of the payment of unemployment benefits* granted to the beneficiaries takes place, as follows:

- a) on the date of employment, according to the law, for a period longer than 12 months;
- b) on the date when the beneficiary makes from activities authorised according to the law monthly revenues larger than the minimum gross national guaranteed salary;
- c) 90 days from the issuing of the functioning permit for the carrying out of independent activities or of the registration certificate, if he or she makes monthly revenues larger than the minimum gross national salary guaranteed in payment;
- d) on the date of the unjustified refusal to be employed according to the training or to the level of the studies in a workplace situated at a distance of at most 50 km from the domicile locality;
- e) on the date of the unjustified refusal to participate in services for the simulation of occupation and of professional training or on their interruption date for reasons imputable to the person;
- f) if the retirement period for invalidity exceeds 12 months;
- g) on the date of fulfilment of the conditions for the retirement for age limit, from the request date of the anticipated retirement or on the date when the invalidity retirement becomes unrevisable;

- h) on the date of the beneficiary's leaving abroad for a period longer than 3 months;
- i) on the starting date of the execution of a punishment depriving of freedom for a period longer than 12 months;
- j) in case of the beneficiary's death;
- k) upon expiry of the suspension deadlines of the payment of the right, expressly provided at Article 45 par. (2) and (3);
- l) upon expiry of the suspension deadlines calculated according to the contribution periods, provided at Article 39 par. (1), and respectively at Article 40 par. (1);
- m) on the admission date to a form of education, in the case of the persons assimilated to the unemployed, provided at Article 17 par.(2) letters a) and b).

3.9. The social security rights of the unemployed

The beneficiaries of the unemployment benefit are assimilated to the employees earning a salary and as a consequence are insured in the system of state social security and in the system of social health insurances and implicitly, have the rights provided by the law for the persons insured in these systems (Article 48).

As a consequence, the agencies for workforce occupation shall transfer both *the individual contribution to social security* – established according to Article 4 of the Emergency Government Ordinance no. 147/2002 for the regulation of some financial problems and for the modification of some norms¹, at the quota of 9.5% - by Article 21 par.(2) of the Law no. 380/2005 concerning the state social security budget for the year 2006², and the contribution for social health insurances, of 6.5% such as it was established by Article 51 par. (2) of the Emergency Government Ordinance no.150/2002 concerning the organisation and the functioning of the social health insurance system³.

As a consequence, the rights to state social security of the beneficiaries of the unemployment benefit are borne from the budget of state social security.

¹ Published in the Romanian Official Journal, part I, no. 821 of November 13, 2002

² Published in the Romanian Official Journal, part I, no. 1150 of December 19, 2005.

³ Published in the Romanian Official Journal, part I, no. 838 of November 20, 2002.

