

## **NEW FORMS OF LEAVE AND ALLOWANCES GRANTED TO EMPLOYEES IN SPECIAL FAMILY SITUATIONS**

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**Abstract:** The worldwide Covid-19 pandemic has produced numerous consequences and transformations at the level of labor legislation. Medical emergencies and the establishment of quarantine were likely to trigger real personal and family crises from the need to provide personal care or support to a relative or other infected person. Considering that the Romanian legislation in force only gave the employee very few options to provide help to close people in such situations (apart from unpaid leave and leave for taking care of the sick child), it became obvious that it was necessary to modify it and introduce new forms of leave. Thus, the right of employed parents to leave for taking care of a sick child has been extended until the child reaches the age of 12, and other possible cases of suspension of the individual employment contract at the initiative of the employee have been regulated, respectively: carer's leave or the right to be absent from the workplace in unforeseen situations, determined by a family emergency caused by illness or accident, which make the immediate presence of the employee indispensable, provided that the employer is informed in advance and with the recovery of the absent period until the full coverage of the normal duration of the employee's work schedule.

**Keyword:** leave, employee, employer, allowance, care, child.

### **INTRODUCTORY CONSIDERATIONS**

The worldwide Covid-19 pandemic produced numerous consequences in various fields, the most affected being the sanitary domain and – naturally – the legislative one. Numerous transformations took place at the level of labor legislation, with the need for detailed regulation of tele-work and various situations in which the change of the workplace or the suspension of the individual employment contract can occur (by law, by agreement of the parties, by the unilateral act of will of one of the parties). Medical emergencies and the establishment of quarantine were likely to trigger real personal and family crises from the need to provide personal care or support to an infected child, relative or other person.

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Parents have the duty to raise, care for and educate the child from birth, their first option being to benefit from maternity leave (mother), paternity leave (father), leave for raising the child up to 2 or, in the case of the disabled child, until the age of 3 (only one of the parents). But once the child reaches the age of 2 or 3 (for the disabled child) and these rights have been exhausted, the parents return to work and have to find a solution for the supervision and care of the children, especially when they get sick.

Considering that the Romanian legislation in force only gives the employee very few options to provide help to close people in such situations<sup>1</sup> (apart from unpaid leave and leave for the care of a sick child up to 7 years old or, in the case of a disabled child, for intercurrent illnesses, until reaching the age of 18), it became obvious that it was necessary to modify it and introduce new types of leaves, as well as introduce or modify the amount of certain allowances granted as family benefits. Thus, the right of employed parents to sick child care leave, respectively to the allowance related to this leave, was extended until the child reaches the age of 12; the amount of the allowance for raising a child aged up to 2 years or, in the case of a child with a disability, up to the age of 3, was changed as well as the amount and duration of payment of the insertion incentive; other possible cases of suspension of the individual employment contract at the initiative of the employee were regulated, respectively: carer's leave or the right to be absent from the workplace in unforeseen situations, determined by a family emergency caused by illness or accident, which make the immediate presence of the employee indispensable, provided that the employer is informed in advance and with the recovery of the absent period up to full coverage of the normal duration of the employee's work schedule.

Apart from the classic situation of leave for temporary incapacity for work, the infection with Covid-19 led to numerous situations in which employees benefited from leave for quarantine and isolation. In the event of an infectious-contagious disease that requires isolation, employees have the right to leave and allowance for temporary incapacity for work, without fulfilling the condition of contribution period, as in the case of medical-surgical emergencies, tuberculosis, infectious-contagious diseases from group A, established by Government decision, neoplasias, AIDS<sup>2</sup>. Also, in order to prevent illnesses, insured persons have the right to

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<sup>1</sup> For details regarding previous legislation, see Marina Loredana Belu, Roxana Cristina Radu, Marius Cristian Neamțu, Oana Maria Neamțu, *The Protection Ability of the Main Social Assistance Benefits within the Romanian Social Security System*, in "Revista de Științe Politice/Revue des Sciences Politiques", no. 41/2014, pp. 214–223.

<sup>2</sup> Article 8 para. (1) from Law no. 136/2020 regarding the establishment of measures in the field of public health in situations of epidemiological and biological risk, modified by Point 1, Article I of Government Emergency Order (G.E.O.) no. 126 of July 31, 2020, published in the Official Gazette no. 695 of August 3, 2020.

quarantine leave and allowance, without fulfilling the condition regarding the insurance period<sup>3</sup>.

According to article 51 of the Labor Code, the individual employment contract can be suspended at the initiative of the employee (upon request), in the following situations:

- a. leave for raising a child up to 2 years old or, in the case of a disabled child, until reaching the age of 3;
- b. leave for the care of a sick child up to 7 years old (as was the previous formulation of this situation in the Labor Code) or, in the case of a disabled child, for intercurrent illnesses, until the age of 18;
- c. paternity leave;
- d. leave for professional training (granted upon request under the conditions of article 149 of the Labor Code);
- e. the exercise of elective functions within the professional bodies established at the central or local level, for the entire duration of the mandate;
- f. participation in the strike;
- g. accommodation leave.

Also, the same article provides that an individual employment contract can be suspended in the event of unjustified absences of the employee under the conditions established by the applicable collective labor contract, the individual employment contract and the internal regulations, however – in such a situation, the employee is exposed to the risk of disciplinary sanctions, including the termination of the individual employment relation through disciplinary dismissal<sup>4</sup>.

Of all these situations of possible suspension of the individual employment contract, all cases related to raising and caring for children are relevant to the topic of this research paper.

Maternity leave<sup>5</sup>, which represents a case of legal suspension of the individual employment contract, is granted, according to Government's Emergency Order (G.E.O.) no. 158/2005 on social health insurance leaves and allowances, for a period of 126 calendar days, of which 42 days of leave after the birth of the child are mandatory. The amount of the allowance in the case of maternity leave is 85% of the calculation basis. The basis for calculating social insurance allowances is determined as the average of the gross monthly income from the last 6 months out of the 12 months from which the insurance period is constituted, up to the limit of 12 minimum gross

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<sup>3</sup>Article XVI of G.E.O. no. 30 of March 18, 2020, published in the Official Gazette no. 231 of March 21, 2020.

<sup>4</sup>Roxana Cristina Radu, *Dreptul muncii – Aspecte teoretice și practice*, Craiova, Editura Aius, 2015, p. 277.

<sup>5</sup>For details, see Roxana Cristina Radu, *Measures of protecting maternity and childbirth under the impact of new medical technologies of assisted human reproduction*, in “Anuarul Institutului de Cercetări Socio-Umane «C.S. Nicolăescu-Ploșor»”, no. XXIV, 2023, pp. 131–143.

salaries per country per month, on the basis of which the labor insurance contribution is calculated<sup>6</sup>.

With regard to parental leave for a child up to 2 years old or, in the case of a disabled child, up to the age of 3<sup>7</sup>, currently the provisions of the G.E.O. no. 158/2005 regarding family support for raising the child, with subsequent amendments and additions (mainly, G.E.O. no. 111/2010 and G.E.O. no. 124/2011). Thus, people who, in the last year before the date of the child's birth, have earned professional income subject to income tax for 12 months, benefit from leave for raising the child until the child reaches the age of 2 and in the case of the child with a disability - until the child reaches the age of 3 years, as well as a monthly allowance. The allowance for raising the child is set at the amount of 85% of the average net income achieved in the last 12 months of the last 2 years prior to the date of the child's birth and cannot be lower than the amount resulting from applying a multiplication coefficient of 2.5 to the value of the social reference indicator<sup>8</sup>, and its maximum amount cannot exceed 8,500 lei. The amount of the allowance for raising the child is increased by 50% of the allowance due for each child born from a pregnancy of twins, triplets or multiples, starting with the second child resulting from such a birth.

The individuals who, during the period in which they are entitled to benefit from parental leave (leave for raising the child) and the related monthly allowance, obtain income subject to profit tax, have the right to an insertion incentive according to article 7 para. 1 of G.E.O. no. 111/2010 regarding leave and monthly allowance for raising children as follows:

- a) in the amount of 1,500 lei, if the entitled individuals obtain professional income before the child reaches the age of 6 months, respectively 1 year in the case of a child with disabilities. This amount is granted until the child reaches the age of 2 years, respectively 3 years in the case of a child with disabilities;
- b) in the amount of 650 lei if the entitled persons obtain income after the child reaches the age of 6 months, respectively 1 year in the case of a child with disabilities.

People who have completed leave for raising children and obtain income subject to income tax such as income from wages and incomes assimilated to wages,

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<sup>6</sup> Article 10 of G.E.O. nr. 158/2005 concerning social health insurance leaves and allowances.

<sup>7</sup> For details on EU regulations concerning this type of leave, see Roxana Radu, *Concediul pentru creșterea copilului în reglementările Uniunii Europene*, in "Arhivele Olteniei", Serie Nouă, no. 27/2013, pp. 417–424.

<sup>8</sup> The Social Reference Indicator (ISR) represents the value against which all social benefits are calculated, such as the guaranteed minimum income, unemployment allowance, etc. The value of the ISR can be changed by a decision of the Government, depending on the index of growth in consumer prices forecast annually or for the previous year, as provided for in Law no. 76/2002 on the unemployment insurance system and the stimulation of employment.

from independent activities, from intellectual property rights and from agricultural, forestry and fish farming activities benefit from the insertion incentive in the amount provided for in article 7 para. (1) lit. b) of G.E.O. no. 111/2010 after the child reaches the age of 2, respectively 3 years in the case of the child with disabilities until the child reaches the age of 3 years, respectively 4 years in the case of disabled child.

Paternity leave is granted at the request of the child's father in the first 8 weeks after the birth of the child, with a duration of 5 working days, and if the father has obtained a certificate of completion of a childcare course, the duration is 15 working days<sup>9</sup>. The granting of paternity leave does not depend on the period of activity performed or the length of service of the employee<sup>10</sup>. The compensation received is equal to the salary related to the respective working days (including increments and additions to the basic salary).

### **LEAVE FOR THE CARE OF A SICK CHILD**

In Romania, one of the parents (natural or adoptive) has the right to a paid leave to take care of their child/children, when they fall ill. In the previous regulation, this type of leave could be requested for all children up to 7 years old or 18 years old, in the situation where they suffered from a disability. An addition introduced by G.E.O. no. 99/2017 provides that, in the case of a child with serious ailments, the insured have the right to leave and allowance for the care of the sick child up to 16 years old. It is, however, only about certain very serious illnesses. The list of serious diseases is established by the specialized commissions of the Ministry of Health and is provided in the rules for the application of the respective emergency order. When including illnesses in this list – on devices and systems – clinical, evolutionary elements and complications are taken into account which determine – by the severity of the morphological and functional disorders – a cumulative duration of the medical care provided to the child, exclusively for the basic illness, of more than 90 /180 calendar days per year.

Law no. 179/2023 for the amendment of article 26 para. (1) of the G.E.O. no. 158/2005 on social health insurance leave and allowances increased by five years the age of the sick child for whose care the leave can be requested. Thus, currently employed parents can request this type of leave for sick children up to 12 years old. The insured who, under the terms of the law, was appointed guardian, or to whom the children were entrusted for adoption or were placed in foster care, also benefits from the same rights, if he/she meets the conditions required for by the government emergency order for their granting.

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<sup>9</sup> Articles 1, 2 of Law no. 210/1999 on parental leave.

<sup>10</sup> Point 25 of Law no. 283/2022 for the amendment and completion of Law no. 53/2003 – Labor Code, as well as G.E.O. no. 57/2019 regarding the Administrative Code.

The cumulative duration of sick child care leave is a maximum of 45 calendar days per year, for each child, but can be extended when more serious medical problems arise in the child's condition. If both parents work and meet legal conditions, either of them can request this leave in full or the total number of leave days can be divided between the two parents, depending on the option and availability of each, but the total number of leave days cannot exceed the maximum leave period allowed by the legislation.

Leave for the care of the sick child is granted on the basis of a medical certificate issued by the family doctor or the specialist doctor. In this context, it should be emphasized that, according to the methodological rules for granting medical leaves, the family doctor can only prescribe a medical leave for 14 calendar days per month, in one or more stages, while longer medical leaves, of a maximum of 30 or 31 calendar days, can only be granted by the specialist doctor, from the outpatient clinic or from the hospital.

The 45 days can be exceeded for more serious illnesses of the child. For example, if the child is diagnosed with infectious diseases, neoplasms, is immobilized in a plaster cast or undergoes surgical interventions, the limit of 45 calendar days in a year can be exceeded and the maximum duration of leave can be extended up to 90 days a year. In even more serious situations, even the 90-day limit can be extended for one year, but the issuance of a new medical leave over this limit can be done by the specialist doctor, only with the approval of the social insurance expert doctor.

Regarding the legal conditions for granting the leave and the allowance to which the parents are entitled, medical leave for the care of the sick child can be requested if the employee has contributed to the public health system for at least six months in the last 12 months. For this type of leave that is paid, the employee parents are entitled to an allowance, calculated in gross value as amounting to 85% of the calculation basis. The basis for calculating the allowance for the care of the sick child is determined as the average of the gross monthly income from the last 6 months out of the 12 months from which the contribution period is made up, up to the limit of 12 minimum gross salaries per country per month, on the basis of which the insurance labor contribution is calculated if the parents belong to the following two categories of persons:

a) earns income from carrying out an activity based on an individual employment contract, a civil service relation, act of secondment or a special status provided by law, as well as other incomes assimilated to wages, in compliance with the provisions of European legislation applicable in the field of social security, as well as the agreements regarding the social security systems to which Romania is a party;

b) realizes in Romania the revenues provided for in letter a), from employers in states that do not fall under the scope of the applicable European legislation in the field of social security, as well as the agreements on the social security systems to which Romania is a party.

In the case of persons whose status as an employee has ceased, but who benefit from unemployment allowance, the basis for calculating the allowance for the care of a sick child is determined as the average of the gross monthly income representing unemployment allowance, from the last 6 months out of the 12 months from which the contribution period is constituted, up to the limit of 12 minimum gross salaries per country per month.

The allowances granted to employees for the care of the sick child are covered entirely from the budget of the National Single Health Social Insurance Fund. As a procedure, the allowance in the amount of 85% of the average gross income of the last six months is paid by the employer, and he must later recover, from the territorial social insurance office to which he belongs, the amounts paid to the employee.

Similar rules regarding the granting conditions and the method of calculation of the allowance also apply to parents who have disabled or severely disabled children, with the difference that, in these situations, leave for the care for the sick child can be granted until the child reaches the age of 18 years. There are more than 220 diagnoses on the list of very serious conditions that allow this leave to be granted until the child turns 18.

### **CARER'S LEAVE**

The carer's leave, a case of suspension of the individual employment contract by the unilateral act of will of the employee, was recently introduced into the Romanian labor legislation, namely in 2022. The carer's leave was conceived following the countless waves of the Covid-19 pandemic, being meant to be a measure to support employees facing family crises due to serious medical conditions of close relatives who - even if they are adults - require special care and attention or facing difficult situations created by the lack of healthy adults to care for and supervise small children. Until the adoption of Law no. 283/2022 for the amendment and completion of Law no. 53/2003 – Labor Code, as well as G.E.O. no. 57/2019 regarding the Administrative Code and the appearance of the Order of the Minister of Labor and Social Solidarity and of the Minister of Health no. 2.172/3.829/2022 regarding the granting of carer's leave<sup>11</sup>, the only legal way to be absent from work was to request an unpaid leave for personal interests which, being a case of suspension of the individual employment contract by agreement of the parties, also required the employer's acceptance.

According to Law no. 283/2022, the employer has the obligation to grant carer's leave to the employee in order to provide personal care or support to a relative or a person who lives in the same household as the worker and who needs care or

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<sup>11</sup> Published in the Official Gazette no. 1241 of December 22, 2022.

support as a result of a serious medical problem, with a duration of 5 working days in a calendar year, at the written request of the employee. By special laws or by the applicable collective labor agreement, a longer duration can be established for the carer's leave. This period is not included in the duration of annual leave and constitutes seniority in work and in the specialty.

"Career" is – according to the legal provisions - the employee who provides care or personal support to a relative or a person who lives in the same household as him/her and who needs care or support as a result of a serious medical problem. In the sense of article 152<sup>1</sup> para. (1), as well as of para. (3) of the same article from the Labor Code, by relative is meant the son, daughter, mother, father or husband/wife of an employee.

Therefore, the Labor Code offers employees a maximum of 5 working days off per year, paid by the employer, to provide adequate care to sick relatives (spouse, child, parent) or to a person who lives in the same household as the employee and who is in need for support as a result of a serious medical problem without fear of losing their job. Since a "serious medical problem" usually requires a greater number of days of medical care, the carer's leave can be increased by means of special laws or applicable collective labor agreements. It should be noted that - compared to other types of leave (cases of legal suspension of the individual employment contract or at the initiative of the employee), for this type of leave, no contribution period or some minimum period of seniority in the unit, in the specialty or in the work is required. The universality of the right to carer's leave, which is reflected in the lack of legal conditions for granting this leave, is salutary considering the fact that the legal text refers to "serious medical problems" that can occur at any time and unexpectedly. In the definition given by the Order of the Ministry of Labor and Social Solidarity No. 2172/3829/2022 of November 25, 2022 regarding the granting of carer's leave, serious medical problems represent "diseases or their complications that affect the patient's functional status for certain periods or permanently, respectively significantly limit the possibility of performing basic activities and everyday instrumental activities, reaching the impossibility of performing them, requiring the support of another person"<sup>12</sup>.

Carer's leave covers a list of serious illnesses scheduled in the Annex to Order No. 2172/3829/2022 of November 25, 2022, among which are: ophthalmological, psychiatric, nephrological, endocrinological, urological, rheumatological illnesses, diabetes conditions, nutrition and metabolic diseases, otorhinolaryngology conditions, illnesses detected by occupational medicine, allergy and clinical immunology conditions, pulmonary and pediatric illnesses, cardiovascular, hematological, immune and digestive system conditions, orthopedic, neurological, dermatological, oncological diseases.

Carer's leave is granted at the employee's request, and in order to benefit from it, the employee must also submit medical supporting documents, certifying the

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<sup>12</sup> Article 1 of Order No. 2172/3829/2022 of November 25, 2022 on carer's leave.



health status of the relative or the cared-for person. The medical problem is proven either with the hospital discharge ticket or with the medical certificate issued by the treating or family doctor of the person cared for. The supporting documents will have to be submitted by the employee within 30 working days at most from the moment she/he requested the granting of the carer's leave.

In the case where care is required by a person who is not a relative or spouse of the employee, but who lives in the household with him, in order to benefit from this type of leave, the identity document of the person in need is also required, from which to show the same domicile or residence as the employee, the act by which the person was taken into the space, the certificate from the owner/tenant association or the employee's self-responsible declaration from which it can be concluded that the person lives in the same household as him/her, at least during care leave.

The individual employment contract is suspended during the carer's leave (suspension by the employee's unilateral act of will), and the employee is entitled to an allowance paid from the employer's salary fund. The amount of the allowance is equal to the basic salary corresponding to the respective period.

From the perspective of other insurances and by derogation from the provisions of article 224 para. 2 of Law no. 95/2006 regarding the reform in the field of health, republished, with subsequent amendments and additions, employees on carer's leave remain insured, for the duration of this leave, in the social health insurance system without payment of the contribution, and the carer's leave period also constitutes an internship contribution for the unemployment benefit or the one for temporary incapacity for work granted under the conditions of the legislation in force. It should also be mentioned that, according to the provisions of the Labor Code, the rights acquired by an employee prior to the granting of carer's leave will be maintained for the entire duration of the leave.

In addition, the legislation also states that employers cannot order the termination of employment or civil service relationships while the employee or civil servant is on care leave.

Non-compliance with the legal provisions regarding the granting of carer's leave attracts the contraventional sanctioning of the employer with fines between 4,000 and 8,000 lei<sup>13</sup>.

## **DAYS OFF FOR FAMILY EMERGENCIES**

Another measure aimed at supporting employees facing difficult family situations was also introduced through Law no. 283/2022 for the amendment and

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<sup>13</sup> Article 260, para. 1 letter t)-u) of Labor Code, introduced by point 30 of Law no. 283/2022 for the amendment and completion of Law no. 53/2003 – Labor Code, as well as of Government Emergency Order no. 57/2019 regarding the Administrative Code.

completion of Law no. 53/2003 – Labor Code, as well as of Government Emergency Order no. 57/2019 regarding the Administrative Code. According to art. 152<sup>2</sup> of the Labor Code, introduced following the adoption of this law, the employee has the right to be absent from the workplace in unforeseen situations, determined by a family emergency caused by illness or accident, which make the immediate presence of the employee indispensable, in the conditions of prior information of the employer and with the recovery of the absent period until the full coverage of the normal duration of the employee's work schedule. Absence from work in these circumstances cannot last more than 10 working days in a calendar year. The employer and the employee mutually determine the way to recover the period of absence<sup>14</sup>.

### ***DE LEGE FERENDA PROPOSAL***

The granting of these leaves and allowances, especially those for the care of a sick child, like most family benefits, requires the existence of a natural or adopted child or that has been entrusted in foster care to the beneficiary or with a view to adoption, and in the case of those for the caregiver, it implies the existence of a relative or a person who lives together with the employee, in the same household, and who needs support, as a result of a serious medical problem. The right to family benefits arises from the moment the child is born, placed in foster care or with a view to adoption, or from the date the decision approving the adoption remains irrevocable<sup>15</sup>.

Unlike the Romanian legislation, in the case of leave for the care of a sick child, the French legislation does not even impose the condition of the existence of a legal relationship of legitimate affiliation, natural or adoptive, between the beneficiary and the child, a state of fact being sufficient for granting the social benefit, namely effective and permanent care (involving the provision of housing, food, educational and emotional responsibilities, etc.) of the child by the person in question. The right to family benefits for natural, adopted, entrusted or only in care children, arises from the moment the child is in the effective care of the beneficiary of the leave and allowance<sup>16</sup>. Moreover, French employees have two options at hand in the event of a child's illness: leave to care for a sick child, for which no condition regarding the contribution period or length of service is required, and the leave can be requested in order to care for a child under 16 years; parental presence leave,

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<sup>14</sup> Article 152<sup>2</sup> of Labor Code, introduced by Law no. 283/2022 for the amendment and completion of Law no. 53/2003 – Labor Code, as well as of Government Emergency Order no. 57/2019 regarding the Administrative Code.

<sup>15</sup> Roxana Radu, Marieta Soreață, *Propunere de lege ferenda privind acordarea concediului și indemnizației pentru creșterea copilului în vârstă de până la 2 ani de la data încredințării în vederea adopției*, in “Revista de Științe Juridice/ La Revue de Sciences Juridiques”, no. 3-4/2005, p. 53.

<sup>16</sup> Jean-Jacques Dupeyroux, Xavier Prétot, *Sécurité sociale*, 10<sup>e</sup> édition, Paris, Éditions Sirey, 2000, p. 98.

which can be requested when the child under the age of 20 (!) in the maintenance/care of the employee suffers from an illness, a disability or is the victim of a particularly serious accident, the duration of this leave being 310 working days, requested in whole or in part, in a maximum period of 3 years, depending on the doctor's recommendation and the estimated duration of the child's treatment<sup>17</sup>. It should be emphasized that such a generous age limit (20 years) and leave duration (310 days) would have been very useful in the case of the people involved in the accident at "Colectiv" Club on October 30, 2015 and would have prevented the loss of jobs in the case of the parents of those injured in the tragedy.

Another aspect that must be emphasized is that, in the absence of legal regulations that would give parents the opportunity to benefit from leave and allowance for the care of sick children until the age at which they can take care of themselves and administer their own medication, even at home, employed parents - in the absence of other relatives - will find themselves in a situation where they would have to temporarily suspend their activity (unpaid leave) or reduce their working hours (part-time contract), both being, however, situations that depend on obtaining the employer's agreement. A third possibility would be to resort to third parties and to pay them for this purpose, based on an individual employment contract or a civil agreement, which - in the absence of support from the state, through social security benefits, would lead to a drastic drop in incomes and living standards.

For example, French legislation regulates the child's care at home allowance and the family allowance for the employment of a certified maternal assistant under the law<sup>18</sup>. The child's care at home allowance, awarded without the condition regarding the level of income, was introduced by the Barzach Law of 29 December 1986 in order to grant financial aid to parents or the single person who exercises a professional activity and employs a person in order to take care, at home, of their children aged up to 3 years<sup>19</sup>. Family assistance for the employment of a certified maternal assistant, created by the law of July 6, 1990, allows a couple or a single person to hire a certified maternal assistant to provide care for a child aged up to 6 years in their own home<sup>20</sup>, provided that the assistant's remuneration does not exceed a certain amount. Another benefit intended to guarantee a minimum family income is the allowance for the isolated parent which is granted to all single people, resident in France, who take care of one or more children aged up to 10 years<sup>21</sup> and who have income below a certain ceiling established according to the number of children in

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<sup>17</sup> For details, see <https://www.aide-sociale.fr/aide-garde-enfant/>, accessed: March 2024.

<sup>18</sup> Jean-Jacques Dupeyroux, *Droit de la sécurité sociale*, 13<sup>e</sup> édition, Paris, Éditions Dalloz, 1998, pp. 613-614.

<sup>19</sup> Later, by a law from 1994, this age was increased to 6 years. Currently, this allowance is regulated by L842-1 of the French Social Security Code (Code de la sécurité sociale).

<sup>20</sup> Jean-Jacques Dupeyroux, *cit. work*, 1998, p. 614.

<sup>21</sup> For details, see <https://www.aide-sociale.fr/aide-garde-enfant/>, accessed: March 2024.

their care<sup>22</sup>. This effort made by the French state to ensure a very complex regime of family benefits (which also includes allowance for the second child, parental allowance for the purpose of education, family support allowance, allowance for the beginning of the school year, special education allowance, housing allowance, etc.) in order to support the family both in its traditional form - husband, wife, children, as well as to prevent family emergencies or situations stemming from new lifestyles that have led to the emergence of a great diversity of family models (single-parent families, free unions with or without children, families composed of divorced or separated parents themselves, adoptive families, etc.) is truly impressive<sup>23</sup>.

Law no. 179/2023 for the amendment of article 26 para. (1) of the Government Emergency Order no. 158/2005 on social health insurance leave and allowances fixed at 12 the age of the child for which the leave for the care of the sick child can be requested. The rationale behind this age increase is that children of seven years or even older cannot stay at home alone to care for themselves, nor can they self-administer the necessary medication to get well. The minimum age from which it is considered that a child can be left alone at home, but not for a period exceeding a few hours, according to psychologists and doctors consulted by Romanian parliamentarians, is 12 years<sup>24</sup>. Since, however, it can also be the case that the condition the child suffers from requires medical care and hospitalization in a hospital unit, or the child is undergoing surgery, has suffered burns or other serious injuries or is immobilized in a plaster cast, imposing the presence of a permanent companion, *de lege ferenda* we consider that it would have been indicated for the age to be increased by more than 5 years, respectively to reach at least the age of 14 - the threshold of restricted exercise capacity according to the Romanian legislation in force, or the age of 16 years, as mentioned in article 26 paragraph 1<sup>1</sup>, introduced by G.E.O. no. 99/2017, but only in the case of serious illnesses.

This additional increase is supported by the provisions of art. 27<sup>1</sup> of G.E.O. no. 158/2005, which concerns the situation in which the child needs treatment in a hospital unit on the territory of another member state of the European Union, the European Economic Area and the Swiss Confederation or on the territory of another state that is outside the European Union, the European Economic Area and Swiss Confederation. Thus, one of the parents or the insured who, according to the law, adopted, was appointed guardian, to whom the child was entrusted for adoption or was placed in foster care, benefits from medical leave for the care of the sick child

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<sup>22</sup> Gilles Huteau, Éric Le Bont, *Sécurité sociale et politiques sociales*, 2<sup>e</sup> édition, Paris, Armand Collin/Masson, 1997, pp. 363–364.

<sup>23</sup> Sanda Ghimpu, Alexandru Țiclea, Constantin Tufan, *Dreptul securității sociale*, București, Editura All Beck, 1998, pp. 396–397.

<sup>24</sup> For details, see [https://www.avocatnet.ro/articol\\_61776/Oficial-Salaria%C8%9Bii-pot-s%C4%83-intre-in-concediul-pentru-ingrijirea-copilului-bolnav-pan%C4%83-ce-acesta-impline%C8%99te-12-ani-Trebuie-modificate-%C8%99i-norme-le-curand.html](https://www.avocatnet.ro/articol_61776/Oficial-Salaria%C8%9Bii-pot-s%C4%83-intre-in-concediul-pentru-ingrijirea-copilului-bolnav-pan%C4%83-ce-acesta-impline%C8%99te-12-ani-Trebuie-modificate-%C8%99i-norme-le-curand.html), accessed: March 2024.

if he accompanies the child to the treatment on the territory of a member state of the European Union, the European Economic Area and the Swiss Confederation or on the territory of another state that is not a member of the European Union, the European Economic Area and the Swiss Confederation. Since it is about leaving the territory of the country and about providing medical care to a minor, usually for a long period, *de lege ferenda* we believe that it would have been appropriate to set the age limit for the full age (18 years), so that the parents (natural or adoptive) can benefit from leave paid for the care and accompaniment of the sick child abroad.

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