

A blurred photograph of several business professionals in dark suits walking up a modern staircase with light-colored steps and glass railings. The motion blur conveys a sense of activity and movement.

**LABOUR LAW IN SERBIA
AT PRESENT:
PRACTICAL CONSIDERATIONS**

JPM

JANKOVIĆ POPOVIĆ MITIĆ



Labour Law in Serbia at present: Practical Considerations
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INTRODUCTION

Amendments to the Labor Law in effect since July 2014 stipulate new rights and new obligations, including restrictions for the employers. These amendments did not eliminate all doubts that the employers had regarding practical implementation of the Labor Law provisions which has significantly impacted on the procedure of ascertaining rights and obligations of the employees.

Today, more than two years since the amendments were adopted, the Ministry of Labor, Employment, Veteran and Social Affairs, including the inspection authorities and the competent courts, have reached the point of common understanding regarding the implementation of certain contentious provisions of the Labor Law. We would like to bring to your attention some of the most significant legal points of the competent authorities, in order to shed light on any remaining doubts as to how the law should be applied in practice.

EMPLOYMENT AGREEMENT FOR A DEFINITE PERIOD OF TIME

- Employer can conclude one or more employment agreements for a definite period of time on the basis of temporary increase of scope of work, with one employee, which shall not be longer than 24 months, and after the expiry of such agreement, the employer cannot conclude another agreement on the same basis with the same employee for the same or other job position.

COMPENSATION FOR DIRECTOR'S SERVICES

- A director, who is engaged on the basis of the agreement on rights and obligations, i.e. without establishing an employment relation, can perform his/her duties without compensation. However, in such agreement it is necessary to state reasons due to which the director will not receive compensation for his/her work (e.g. the Director is employed with the company's founder; the Director is the founder and the company's sole member).

REDUNDANCY

- When determining redundant employees, the employer is obliged to apply specific criteria to determine which employees will be made redundant. However, if there is a possibility for implementation of measures for resolving redundancy (e.g. transfer of the redundant employee to another job position), the employer is also obliged to stipulate the criteria based on which it will determine the employees to whom the measures for resolving redundancy will be applicable.
- Payment of severance pay before employment termination on the basis of redundancy represents mandatory element of the resolution on termination of employment on such basis. Therefore, if the employer does not perform payment of severance pay to the employee within the period provided by the Law, it shall be considered that the resolution on termination of employment is not legal. In accordance with the valid practice of competent authorities, although severance represents pecuniary claim of the employee, it can practically amount to unlawful termination of employment, if not paid before termination of employment.

NON-COMPETITION CLAUSE

- Non-competition clause can also be agreed upon employment termination for period which cannot be longer than 24 months, along with the payment of certain compensation. As such clause does not represent a mandatory element of employment agreement the parties are free to stipulate more precise conditions in the employment agreement. Consequently, according to currently valid legal interpretation, the employee cannot unilaterally, upon employment termination by the employer, be absolved from its obligation to honor a non-competition clause, if such right of the employer is not clearly stipulated by the employment agreement.

ANNEX TO THE EMPLOYMENT AGREEMENT

- If the transfer of the employee to another appropriate job position represents basis for concluding an annex to the employment agreement, the employer cannot state in general manner that the reason for concluding such annex is “work process and organization needs”. Namely, the employer is obliged to state the exact “work process and organization needs” in the notice that is delivered to the employee along with the annex. Therefore, the employer is obliged to state the reasons for concluding the annex to the employment agreement in a clear and precise manner.

WORK OUTSIDE EMPLOYMENT

- Even though until now this was not the case, pursuant to emerging trends in court practice, even persons that were performing the work without establishing employment relationship (service agreement, agreement on temporary/periodical jobs, etc.), depending on concrete circumstances, can request within judicial proceeding to be determined that they, in fact, were employed for indefinite period of time. Thus, employers shall be extremely careful in relation to engaging persons for work outside employment. In case of violation of provisions of the Labor law regulating this field, employers now can also be sanctioned in a judicial proceeding determining the existence of work for indefinite period of time, and not only by means of misdemeanor, as it was the case up until now.

CONSEQUENCES OF ILLEGAL EMPLOYMENT TERMINATION

- If the court, during a proceeding, determines that employment was terminated without legal basis, but also if an employer proves the existence of circumstances which reasonably indicate that further employment of the employee in question, with respect to all circumstances and interests of both disputed parties, shall not be possible, the court will reject the request of the employee to return to work and shall indemnify him in the maximum amount of 36 salaries. The fact that, for instance, employer does not have adequate job position, on which the employee can be returned, will not be deemed as reasonable circumstance. However, the behavior of employee leading to employment agreement termination, i.e. relationship between employee and his colleagues may be deemed as reasonable circumstance. So, the burden of proof that certain indicative circumstances exist, proving that return to work of employee is not in interest of either party, is placed on employer.

CONCLUSION

Please note that the mentioned opinions of competent authorities are not legally binding, and may as well be subject to revision.

Please note that the overview of opinions of informative character mainly in order to draw your attention to some novelties concerning practical implementation of the Labor law provisions.

Jelena Aleksic, Senior Associate

For any further information and more comprehensive advice tailored to a specific situation or set of circumstances, JPM Jankovic Popovic Mitic and members of its labor department are at your disposal.

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