10 THINGS

YOU NEED TO KNOW ABOUT LABOUR AND EMPLOYMENT LAW IN SERBIA

JPM | JANKOVIĆ POPOVIĆ MITIĆ

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1

IMPORTANCE OF FORM

In Serbian labour law system, not much is left to informality. Regulations are quite strict when it comes to the question of form. This includes not only general legal acts of an employer, but also individual ones such as agreements, resolutions on termination, decisions, acceptance of proposals, etc. Namely, Labour law prescribes mandatory elements of such acts as well as their mandatory written form. In case the mandatory form is not followed, i.e. in case the acts do not contain prescribed elements, employer may be held responsible for misdemeanour and fined in line with a resolution of the labour inspection.

Importance of form is also reflected in employer's obligation to conduct prescribed procedure of delivering an individual employment act to an employee. An employer has to provide labour related documents to an employee in written form, personally at the employer's premises, or alternatively at the employee's residential address. This is one of the most significant issues in Serbia's employment law, since all the deadlines for challenging such act commence from the day of delivery of the act.

Additionally, although most employers insist on electronic communication as the primary avenue of communication, in terms of Serbian law hard copy form of documents is still prevalent. Therefore, not only is the employer obliged to provide an individual act to its employee in hard copy, but also all general acts have to be published on the notice board at the employer's business premises. On the eighth day starting from the day of publishing such act, it is considered that the newly adopted rules entered into force and that they can be applied. General acts have to be available to employees, meaning that an employer is obliged to provide employees with access to such acts.

2

RIGHTS AND OBLIGATIONS HAVE TO BE CLEARLY REGULATED

Labour law prescribes minimal rights of employees. Therefore, an employer is obliged to respect the given minimum, but is also at liberty to provide greater rights.

Additionally, a lot is being left to employers to regulate when it comes to concrete rights and obligations of employees. For example, such are compensation amounts of expenses (business trips, meal allowance, annual leave allowance, bonuses etc.), procedures for determining and payment of damage compensation, verifying potential abuse of the right to sick leave, procedures for termination of employment due to absence/deficiency in respect of work results/knowledge/skills.

Given that the Serbian labour law is quite formal, mutual rights and obligations of employer and employees have to be clearly regulated by general and individual acts. Before an employee, or an engaged person, commences work he/she must be informed of his/her rights, but also duties and responsibilities. This issue is significant since, for example, in the case of employment termination, an employee cannot be held responsible for breach of a work duty if such duty was not explicitly regulated in either an individual or a general act and presented to the employee, since in such case it cannot be proven that the employee acted deliberately or with gross negligence.

Other processes need to be also set up in a clear manner. For example, the questions such as who is in charge of health and safety at work, who is responsible to receive whistle-blower's information, to resolve a potential mobbing matter, internal arbitration between the employer and its employees?

3

OBLIGATION TO USE SERBIAN LANGUAGE

Although not explicitly stipulated, it is widely accepted to use Serbian language when dealing within the scope of labour law. This means that the employer has to issue legal acts (such as rulebooks, resolutions, decisions and to execute employment agreements) in Serbian language. Employer is free to execute bilingual documents as well, as long as the Serbian version is the prevailing one.

The need to determine the Serbian language as mandatory comes from the need to protect the employees. Namely, since employee needs to be well informed of his/her rights and obligations, it is considered that such effect can be accomplished only if his/her rights and obligations are communicated in Serbian language which is the official language in Serbia.

Litigations and other proceedings before Serbian courts and administrative authorities are officially in Serbian language. However, relevant laws leave a possibility for using a foreign language (having a court sworn translator or officially translated documents) when a foreign party is included.

4

INTRICATE SALARY STRUCTURE

Salary structure is all but simple. Generally, it contains three parts: salary realised for work performed and time spent at work (consists of: basic salary, portion of the salary for working performance and increased salary); salary on the ground of employee's contribution to business success of the employer (bonuses, premiums and such); other income on the ground of employment (consists of: summer allowance; meal allowance; other income from employment, except specific ones).

What is interesting is that the amount of salary does not represent final expense for the employer. In addition to the salary, an employer is also obliged to bear other expenses which are not considered salary, at least in terms of Labour law,

such as expenses for commuting to and from work, business trips.

It is true that at times it is difficult to regulate certain parts of the salary or calculate total expenses for an employee, however future versions of the Labour Law may make things simpler, which would surely be praised by employers, and foreign investors in particular.

5

'IT'S NOT JUST ONE LAW'

The basic law which regulates rights, obligations and responsibilities of employer and employee is Labour Law. But regulations in Republic of Serbia are far more complex.

There are numerous special laws which regulate other areas of employment and labour-related matters, such as: Law on health and safety at work, Law on strike, Law on employment of foreigners, Law on protection of whistle-blowers, Law on prohibition of harassment at work, Law on records in the field of labour, Law on gender equality, Law on conditions for secondment of employees to temporary work abroad and their protection, Law on financial aid to family with children, Law on prohibition of discrimination of persons with disabilities, Law on amicable resolution of labour litigations, Law on inspection surveillance, Law on personal data protection, as well as the laws which regulate employment insurances and payment of taxes and social insurance contributions.

In addition, there are numerous by-laws rendered by the Government.

One of labour law peculiarities is that apart from the Labour law as a basic act, for certain industries special collective agreements (Branch Collective Agreements) are executed. Such agreements can be considered as special laws since they usually stipulate additional and greater rights for employees. Employers are not only obliged to harmonize their acts with the Labour law, but also with applicable collective agreements.

6

NEGOTIATIONS WITH REPRESENTATIVE TRADE UNION ARE MANDATORY

"You don't have to sign, but you have to negotiate" represents the rule that applies to the negotiation procedure between a representative trade union and an employer. If the representative trade union initiates negotiations for executing the collective agreement, the employer must accept such initiation, otherwise the employer cannot render a unilateral act (rulebook) which would regulate employment relations. Conditions set through by the representative trade union do not have to be accepted, but negotiation procedure must be conducted. Only in case parties do not reach an agreement upon expiry of 60 days starting from the day of commencement of negotiations, it is considered that negotiation procedure has failed and employer is free to unilaterally render an Employment Rulebook or to regulate rights and obligations solely by employment agreement.

Since negotiation procedure has to be initiated by one of the parties, if such initiation does not exist, the employer can again regulate unilaterally employment relations within the company. The same rule applies in case employer initiates negotiations and they are not accepted by the representative trade union.

7

OVERTIME WORKING HOURS SHOULD BE AN EXCEPTION, NOT A RULE

Not only is the employer obliged to keep the track of the overtime working hours and perform payment of "additional" work, but also to take care that overtime work is an exception. Namely, overtime work shall be introduced only in cases when certain unplanned work/tasks need to be completed. Therefore, if the employer introduces an additional working day as a rule, the labour inspection could penalize the employer due to the fact that overtime work is not determined in line with the law.

Employee cannot work longer than 12 hours per day, i.e. longer than 48 hours per week, given that full time working hours per day is eight, i.e. 40 hours per week.

As per the latest amendments of the Labour law, the employer is also held responsible for keeping the track of overtime working hours and therefore performing payment of increased salary amounting to 26% of the basic salary for each additional working hour.

One additional formality employers should take into consideration is that each time overtime work of employee is necessary, employer shall submit to the employee resolution on overtime working hours, which cannot be introduced in a period shorter than five days in advance, exceptionally 48 hours in advance.

8

TERMINATION PROCEDURE CAN BE RATHER COMPLEXED

One of the most controversial issues in Serbian employment law is employment termination. Labour law determines basis for employment termination and its procedure, but it does not regulate such issue in detailed manner, leaving the employer in the dark, essentially forcing the employer to rely on court practice and official opinions of the competent ministry, which are usually not consistent and subject to frequent changes.

Given that the employees represent financially a more vulnerable party, it is not that unusual that evidence is interpreted in employees' favour. Thus, the burden of proof that termination was not unlawful is on the employer.

Depending on the basis of termination, employers are facing different obstacles, the main being complex and rather formal termination procedure.

The risk of unlawful termination is not irrelevant since the employer might be obliged not only to compensate the employee for damage, unpaid salaries for the duration of court dispute, but also the obligation of the employer to return the employee to work.

The employer must also be very careful when it comes to termination procedure, because although the court might rule that employment termination was lawful, if the employer has not follow prescribed termination procedure, the employer will be obliged to compensate the employee for damage in the amount of up to six monthly salaries.

Having in mind the inclination of the court towards the employees, it is no wonder that most terminations of employment are done by executing a mutual agreement on termination.

9

FOREIGNERS HAVE TO OBTAIN WORK PERMIT BEFORE COMMENCEMENT OF WORK

Regardless of the basis of engagement of a foreigner in Serbia, if the work is performed by a foreign citizen, both residence and work permit shall be obtained. Law on employment of foreigners stipulates certain exceptions when obtaining of the permits is not required, such as in the case when a foreigner spends less than 90 days in the six month period in Serbia and is an owner, founder, representative of a member of legal entity registered in Serbia, but is not in employment relation in such legal entity.

The procedure for obtaining of the permits differs depending on the exact permit, but it all essentially comes down to filing the request for the residence permit, one, two or several interviews before the Department of foreigners and filling the request for the work permit to the National Employment Service.

Pursuant to the law, state authorities have to be informed in a timely manner of any change that may affect the right to the permit, e.g. termination of employment agreement before the period for which the permit is issued.

Also, both permits have to be prolonged in a timely manner, i.e. the residence permit has to be prolonged no later than 30 days before its expiry, while the work permit shall be prolonged at earliest 30 days before the expiry.

10

COURT COMPETENCE

Labour disputes are supposed to be resolved urgently. Before the major amendments of the Labour law in 2014, it had been prescribed that labour dispute has to be resolved within six months. Since it was impossible to honour the set deadline, this provision no longer applies.

The average duration of labour disputes in Serbia is from two to three years in the first instance, while there is always a possibility for the proceeding to last much longer if the second instance ruling is taken into consideration.

In addition to the regular legal remedy against the first instance ruling (appeal to the second instance court), in labour disputes parties have the right on revision (extraordinary legal remedy) in case the subject of dispute is establishing, existence or termination of employment relation.

In labour disputes competent court is determined as per the place of work of the employee, whereas employee has the possibility to initiate litigation as per the place of his/her residence. Similar rule applies in terms of applicable law, since it is determined according to the employee's place of work.

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