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CHANGES WITHIN THE EMPLOYMENT REGULATION

PROMENE U RADNOPRAVNOM ZAKONODAVSTVU

Promene u radnopravnom zakonodavstvu/ Changes Within the Employment Regulation

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PROMENE U RADNOPRAVNOM ZAKONODAVSTVU

USTUPANJE ZAPOSLENIH I OLAKŠICE ZA POSLODAVCE

Narodna Skupština Republike Srbije 06.12.2019. godine usvojila je Zakon o agencijskom zapošljavanju, kao i izmene i dopune Zakona o penzijskom i invalidskom osiguranju, Zakona o doprinosima za obavezno socijalno osiguranje, kao i Zakona o porezu na dohodak građana.

U nastavku dostavljamo kratak prikaz najznačajnijih novina koje navedeni zakoni donose.

CHANGES WITHIN THE EMPLOYMENT REGULATION

STAFF LEASING AND BENEFITS FOR EMPLOYERS

On 6 December, 2019 the National Assembly of the Republic of Serbia adopted the Law on Agency Employment, as well as amendments to the Law on Pension and Disability Insurance, Law on Contributions for Mandatory Social Insurance and Personal Income Tax Law.

Please see below a brief overview of the most important novelties that the mentioned laws introduce.



ZAKON O AGENCIJSKOM ZAPOŠLJAVANJU

Nakon niza godina poslovanja u „sivoj zoni“ Zakon o agencijskom zapošljavanju konačno pruža pravni okvir za angažovanje lica preko agencija za privremeno zapošljavanje (Agencija, odnosno Agencije). Predmetni zakon stupa na snagu 14.12.2019. godine, a primenjuje se počev od 01.03.2020. godine. Zakonom je predviđeno da će se isti primenjivati na Agencije počev od dana 01.01.2020. godine.

Ministar nadležan za poslove rada u obavezi je da do 31.12.2019. godine donese podzakonske akte kojima će urediti pitanja u vezi sa radom Agencija.

Zakonom su regulisana prava i obaveze kako Agencija, tako i poslodavaca korisnika, ali i prava i obaveze „ustupljenih zaposlenih“.

Najznačanija novina koju donosi Zakon o agencijskom zapošljavanju svakako predstavlja obaveza poslodavca korisnika da ustupljenom zaposlenom obezbedi pravo na jednake uslove rada koje ima i uporedni zaposleni kod poslodavca korisnika.

Dakle, poslodavac korisnik je dužan da utvrdi koji njegov zaposleni predstavlja uporednog zaposlenog za lice koje se angažuje preko Agencije (tzv. „ustupljeni zaposleni“), te da mu obezbedi jednake uslove rada. Jednaki uslovi rada se odnose na trajanje i raspored radnog vremena, prekovremeni rad, noćni rad, odmor u toku rada, dnevni, nedeljni odmor i godišnji odmor, odsustvo uz naknadu, elementi za obračun i isplatu zarade, naknade zarade i naknade troškova, bezbednost i zdravlje na radu, zaštitu trudnica i majki dojilja, zaštitu omladine, kao i zabranu diskriminacije po svim osnovima.

U tom smislu je od izuzetnog značaja komunikacija između poslodavca korisnika i Agencije, s obzirom na to da je poslodavac korisnik dužan da agenciji dostavi tačne podatke o uslovima rada koji se obezbeđuju ustupljenom zaposlenom.

LAW ON AGENCY EMPLOYMENT

After years of doing business in the “grey area” the Law on Agency Employment finally provides the legal framework for engagement of persons through agencies for temporary employment (the Agency, i.e. the Agencies). The mentioned law enters into force on 14 December 2019, and shall be applied starting from 1 March 2020. The Law stipulates that Agencies have to harmonize with its provisions until 1 January 2020.

Until 31 December 2019, the Minister in charge of labour affairs shall render the by-laws that will regulate the work of the Agencies.

The Law regulates the rights and obligations of the Agencies, as well as the employers who use their services (the Employer), but also of the rights and obligations of the “leasing employees”.

The most important novelty stipulated by the Law on Agency Employment is surely the obligation of the Employer to provide the leasing employee with the work conditions that are equal to those that comparative employee engaged at the Employer has.

Therefore, the Employer is obliged to determine which one of his employees represents comparative employee for the person who is engaged through Agency (i.e. “leasing employee”) and to provide him with equal work conditions. Equal work conditions refer to the duration and schedule of working hours, overtime work, night work, rest during work, daily rest, weekly rest and annual leave, absence with remuneration, elements for the calculation and payment of salary, wages and reimbursements, safety and health at work, protection of pregnant women and nursing mothers, protection of youth, as well as the prohibition of discrimination on all grounds.

Having the said in mind, the communication between the Employer and the Agency is crucial, since the Employer has the obligation to provide the Agency with the accurate data on the work conditions that are being provided to the leasing employee.

U skladu sa Zakonom, poslodavac korisnik solidarno je odgovoran za obaveze Agencije na isplatu zarade, naknade zarade i naknade troškova ustupljenom zaposlenom. U slučaju štete koju ustupljeni zaposleni pretrpi usled povrede na radu ili profesionalnog oboljenja, obaveza je poslodavca korisnika da je nadoknadi, dok je Agencija supsidijarno odgovorna.

Zakon predviđa i ograničenje u pogledu broja lica koja mogu biti angažovana preko Agencije na određeno vreme. Naime, kod poslodavca korisnika koji imaju 50 i više zaposlenih na dan zaključenja ugovora o ustupanju zaposlenih, broj ustupljenih zaposlenih ne može biti veći od 10% od ukupnog broja njihovih zaposlenih. Za poslodavce korisnike koji imaju manje od 50 zaposlenih na dan zaključenja ugovora o ustupanju zaposlenih, propisani su posebni pragovi u pogledu broja ustupljenih zaposlenih. U pogledu angažovanja ustupljenih zaposlenih na određeno vreme primenjuju se opšta pravila rada na određeno vreme predviđena Zakonom o radu.

Imajući u vidu da se napred navedeno ograničenje odnosi samo na ustupljene zaposlene koji sa Agencijom imaju zaključen ugovor o radu na određeno vreme, poslodavac korisnik nije ograničen u pogledu broja angažovanja ustupljenih zaposlenih na neodređeno vreme.

Ipak, u zakonom propisanim slučajevima poslodavac korisnik ne može angažovati lica preko Agencije kao npr. za vreme štrajka (osim u cilju obezbeđivanja minimuma procesa rada), radi ustupanja drugoj agenciji za privremeno zapošljavanje, itd.

U pogledu otkaza ugovora o radu ustupljenih zaposlenih, Zakonom je predviđeno da Agencija sporovodi otkazni postupak zbog razloga koji su nastali kod poslodavca korisnika, a na osnovu činjenica i dokaza koje je poslodavac korisnik u obavezi da dostavi Agenciji bez odlaganja.

Specifičnost ovog Zakona ogleda se i u tome što je ograničena maksimalna visina naknade štete za slučaj nezakonitog otkaza ugovora o radu ustupljenom zaposlenom i to do iznosa od 18 zarada.

In line with the Law, the Employer is jointly liable for the obligations of the Agency in regard to the payment of the salary, reimbursement of the salary and reimbursement of the costs to the leasing employee. In the event of damage that leasing employee suffers from the injury at work or occupational disease, Employer is obliged to compensate the damage, while the Agency is subsidiary liable.

The Law prescribes also the limitation in regard to the numbers of persons who may be engaged through an Agency on definite period. Namely, on the date of executing the employment transfer agreement, the number of leasing employees cannot be higher than 10% of the total number of employees at the Employer. This limitation applies to the Employers who engage 50 or more employees. For the Employers who have less than 50 employees on the date of executing the employee transfer agreement, thresholds are set in regard to the number of leasing employees. In regard to the engagement of the leasing employees on definite period, relevant rules for work on definite period, stipulated by the Labour Law, are applied.

Having in mind that the aforementioned limitations apply only to the leasing employees that have executed employment agreement on definite period with the Agency, there are no limitations for the Employers in regard to the number of leasing employees engaged on indefinite period.

However, in situations prescribed by the Law, the Employer may not engage persons through Agencies during the strike (except for the purpose of ensuring the minimum work process), for leasing to another Agency, etc.

In regard to the termination of the employment of the leasing employees, the Law prescribes that the Agency conducts the termination procedure for the reasons which occurred at the Employer and on the basis of the facts and proofs Employer is obliged to submit to the Agency without delay.

What is also specific about the Law is that the maximum amount of the damage compensation in case of unlawful termination of the employment of the leasing employee is limited up to the amount of 18 salaries.

IZMENE I DOPUNE ZAKONA O PENZIJSKOM I INVALIDSKOM OSIGURANJU, ZAKONA O DOPRINOSIMA ZA OBAVEZNO SOCIJALNO OSIGURANJE, KAO I ZAKONA O POREZU NA DOHODAK GRAĐANA

Setom izmena i dopuna zakona koji se odnose na poreze i doprinose, uvedene su olakšice za poslodavce i to novoosnovana privredna društva koja obavljaju inovacionu delatnost, zatim za poslodavce koji zasnuju radni odnos sa kvalifikovanim novo-zaposlenim, kao i za poslodavce koji zasnuju radni odnos sa novonastanjenim obveznicima u Republici Srbiji, kao licima sa posebnim stručnim znanjima za kojima postoji potreba na tržištu rada u Srbiji.

Olakšice se ogledaju u mogućnosti ostvarivanja prava na oslobođenje od plaćanja svih ili pojedinih doprinosa, kao i umanjeње poreske osnovice u odnosu na koju poslodavci plaćaju porez na zarade.

Izmenama i dopunama Zakona o penzijskom i invalidskom osiguranju uvedena je novina da se pod osiguranicima samostalnih delatnosti smatraju i lica koja rade u Republici Srbiji za stranog poslodavca, koji nema registrovano predstavništvo u našoj zemlji, a kod koga za obavljeni posao ostvaruje naknadu, a to lice nije osigurano po drugom osnovu.

Izmenama i dopunama Zakona o doprinosima za obavezno socijalno osiguranje, stopa doprinosa koju poslodavci plaćaju po osnovu zarade za penzijsko i invalidsko osiguranje, smanjena je za 0,5% i to sa 12% na 11,5%.

Izmenama i dopunama Zakona o porezu na dohodak građana uveden je tzv. test samostalnosti za preduzetnike. Namera uvedenog testa samostalnosti jeste da utvrdi (ne)samostalnost preduzetnika u odnosu na nalogodavca. Ukoliko se utvrdi da je preduzetnik zavistan u odnosu na nalogodavca, odnosno ukoliko preduzetnik ne prođe test samostalnosti, u tom slučaju će se preduzetnikov prihod ostvaren od tog nalogodavca oporezivati kao drugi prihod, po poreskoj stopi od 20%.

Ukoliko preduzetnik ostvaruje prihod i od nekog drugog lica, za koje nije ustanovljeno da je u odnosu zavisnosti, za taj deo prihoda će biti oporezovan kao preduzetnik paušalac, odnosno ulazi u oporezivu osnovicu poreza na prihode od samostalne delatnosti.

AMENDMENTS TO THE LAW ON PENSION AND DISABILITY INSURANCE, LAW ON CONTRIBUTIONS TO THE MANDATORY SOCIAL INSURANCE, AS WELL AS THE PERSONAL INCOME TAX LAW

The amendments to the laws that refer to taxes and contributions introduce the benefits for the employers - newly established companies engaged in innovation activities, for the employers who established employment with a qualified new employee, as well as for the employers who establish the employment with employees that are new taxpayers in the Republic of Serbia and are considered as persons with specific expert knowledge who are needed on the labour market in Serbia.

The benefits refer to the possibility on exercising the right on exemption from payment of all or certain contributions, as well as a reduction of the tax base on which the salary tax is paid.

Amendments to the Law on Pension and Disability Insurance introduces the novelty that the insurance based on the independent activity is also applied to the person who works in the Republic of Serbia, for a foreign employer, that does not have a registered representative office in our country and from which entity he is compensated for his work, under condition that he is not insured on another basis.

Amendments to the Law on Contributions for Mandatory Social Insurance stipulate the decreased rate of the contribution for pension and disability insurance paid by the employers on the basis of salary, by 0.5%, from 12% to 11.5%.

Amendments to the Personal Income Tax Law introduce the so-called test of independence for the entrepreneurs. The purpose of the introduced test of independence is to determine the (in)dependence of the entrepreneur from the purchaser. If the entrepreneur is found to be dependent from the purchaser, i.e. if the entrepreneur does not pass the test of independence, then the entrepreneur's income generated from that purchaser, shall be taxed as other income, at a tax rate of 20%.

If the entrepreneur generates the income from another person, for which he is not deemed as a dependent, for that part of the income he shall be taxed as lump-sum entrepreneur, i.e. it shall be included in the taxable tax base for income on independent activity.

Neoporezivi iznos zarade povećan je sa 15.300 dinara na 16.300 dinara.

Najzad, uprkos brojnim primedbama poslodavaca, mišljenju Ministarstva finansija dato je zakonsko utemeljenje, te u cilju ostvarivanja prava na poreško oslobođenje, troškovi prevoza zaposlenoh za dolazak i odlazak sa rada moraju biti dokumentovani.

The non-taxable amount of salaries is increased from RSD 15,300 to RSD 16,300.

Finally, against numerous remarks of the employers, the opinion of the Ministry of Finance was provided with legal ground, meaning that in order for the right on tax exemption to be exercised, the costs of transportation of the employees for commuting to and from work have to be documented.



PENSION POT



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