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Publisher: JPM Janković Popović Mitić
NBGP Apartmani, Vladimira Popovića 6
www.jpm.rs

Autor: Jelena Nikolic, Partner, Olivera Brković, Senior Associate
Design and prepress: JPM Janković Popović Mitić

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RAD ZA VREME COVID 19 PANDEMIJE **- prava i obaveze zaposlenih i poslodavaca -**

U Republici Srbiji 15.03.2020. godine proglašeno je vanredno stanje zbog pandemije COVID 19.

Tokom trajanja vanrednog stanja u Republici Srbiji biće zatvoreni vrtići, osnovne i srednje škole, fakulteti, dok će ugostiteljski objekti raditi skraćeno.

Preporuka je da poslodavci, kod kojih postoji mogućnost da zaposleni svoje radne obaveze obavljaju od kuće, uvedu rad od kuće tokom trajanja vanrednog stanja.

Imajući u vidu razmere i brzinu širenja COVID 19, kao i uvedeno vanredno stanje u Republici Srbiji, postavlja se pitanje koje mogućnosti poslodavac ima na raspolaganju kako bi ispunio obavezu obezbeđivanja bezbednosti i zaštite života i zdravlja na radu zaposlenih, odnosno kako bi doprineo sprečavanju širenja COVID 19 i ujedno se uskladio sa merama Republike Srbije tokom trajanja vanrednog stanja.

U skladu sa odredbama Zakona o radu, poslodavci na raspolaganju imaju nekoliko mogućnosti.

1. Rad od kuće

Ukoliko organizacija rada i vrsta radnih zadataka koji se kod poslodavca obavljaju to dozvoljavaju, zaposleni svoje radne zadatke mogu da obavljaju od kuće, odnosno van prostorija poslodavca tokom trajanja vanrednog stanja zbog pandemije COVID 19.

Ipak, pre otpočinjanja rada od kuće, neophodno je regulisati međusobna prava i obaveze zaposlenog i poslodavca u vezi sa načinom vršenja nadzora nad radom zaposlenog i kvalitetom obavljenog posla, obavezom poslodavca da nabavi, instalira i održava sredstva za rad, zatim korišćenjem i upotrebom sredstava za rad zaposlenih, kao i naknadom troškova za upotrebu tih sredstava rada tokom rada od kuće, kao i druga pitanja.

WORK IN THE TIME OF COVID 19 PANDEMIC **- rights and obligations of the employees and the employers -**

State of emergency due to the COVID 19 pandemic was declared on 15 March, 2020 in the Republic of Serbia.

During the state of emergency in the Republic of Serbia, kindergartens, primary and secondary schools, as well as faculties will be closed, while cafes, restaurants, bars, hotels, etc. will work part-time.

If possible, it is recommended that employers introduce work from home during state of emergency.

Having in mind the scales and speed at which COVID 19 is spreading, as well as declared state of emergency in the Republic of Serbia, the question arises as to what options the employer has at its disposal to meet the obligation to ensure the safety and protection of life and health at work of the employees, i.e. to contribute to preventing the spread of COVID 19 and at the same time to be compliant with the measures of the Republic of Serbia during the state of emergency.

Pursuant to the provisions of the Labour law, the employers have several possibilities at their disposal.

1. Work from home

In case work organization and scope of working tasks that are conducted at the employer allow it, the employees may conduct their work tasks from home, i.e. outside the business premises of the employer during state of emergency due to COVID 19 pandemic.

However, before commencing work from home, it is important to regulate mutual rights and obligations of the employee and the employer in regard to the manner in which the supervision of employee's work and its quality is conducted, obligations of the employer to obtain, install and maintain means of work, usage of means of work of the employees, as well as compensation of expenses for usage of such means of work during work from home and other issues.

2. Prekid rada

Imajući u vidu da u određenim delatnostima ne postoji mogućnost da zaposleni obavljaju rad od kuće, poslodavci nemaju drugi izbor osim da obustave rad. U skladu sa članom 117. Zakona o radu nadležni organi Republike Srbije, kao i nadležni organ kod poslodavca mogu da uvedu prekid rada tokom trajanja vanrednog stanja usled pandemije COVID 19. Nadležan organ kod poslodavca može da uvede prekid rada iz razloga nemogućnosti da obezbedi bezbednost i zaštitu života i zdravlja na radu, uz prethodnu konsultaciju sa licem ovlašćenim za pitanja bezbednosti i zdravlja na radu. Zakon o radu u ovom slučaju ostavlja poslodavcu mogućnost da predvidi visinu naknade zarade.

Pandemija COVID 19 može uzrokovati i značajno smanjenje obima posla, te usled navedenog razloga, poslodavac takođe može obustaviti rad. U navedenom slučaju, zaposleni bi imali pravo na naknadu zarade u visini od 60% prosečne zarade u prethodnih 12 meseci, s tim da ista ne može biti niža od minimalne zarade u Republici Srbiji. Prekid rada kod poslodavca, do kojeg je došlo bez krivice zaposlenih može da traje najduže 45 radnih dana tokom kalendarske godine. Međutim, ministarstvo nadležno za poslove rada može dati saglasnost i za duže trajanje prekida rada.

3. Kolektivni godišnji odmor

Iako Zakon o radu daje mogućnost poslodavcima da upute zaposlene ili deo zaposlenih na korišćenje kolektivnog godišnjeg odmora, mišljenja smo da takva mera ne bi bila adekvatna u novonastaloj situaciji, tačnije da takva odluka.

4. Neplaćeno odsustvo

Zakonom o radu nisu propisani razlozi zbog kojih poslodavac može da odobri korišćenje neplaćenog odsustva, kao ni maksimalna dužina trajanja istog. Samim tim, ukoliko postoji zahtev zaposlenog za korišćenje neplaćenog odsustva tokom pandemije COVID 19, poslodavac ovakav zahtev može (ali ne mora) da odobri u formi posebnog rešenja.

2. Suspension of work

Having in mind that there is no possibility for employees in certain business activities to conduct work from home, the employers have no other option other than to suspend work. Pursuant to the Article 177 of the Labour law, competent authority of Republic of Serbia, as well as competent authority of the employer, may suspend work during the state of emergency due to COVID 19 pandemic. The competent authority of the employer may suspend work due to the inability to provide safety and protection of life and health at work, with prior consultation with the person in charge for safety and health at workplace issues. Labour law stipulates that in this case the employer is free to determine the amount of compensation of salary.

COVID 19 pandemic may cause significant decrease of scope of work, due to which reason the employer may also suspend work. In the said case, the employees would be entitled to compensation of salary in the amount of 60% of the average salary in the previous 12 months, that cannot be lower than minimal salary in Republic of Serbia. Suspension from work at the employer, that is not caused by fault of the employees, can last up to 45 working days during calendar year. However, competent ministry for labour issues, may provide consent for prolonging the duration of suspension of work.

3. Collective annual leave

Although the Labour law stipulates the possibility of the employer to determine collective annual leave for all or part of the employees, it is our opinion that such measure would not be appropriate in this situation, i.e. that such decision.

4. Unpaid leave

Labour law does not stipulate the cases in which the employer may grant usage of unpaid leave, or its maximal duration. Therefore, in case employee provides the request to use the unpaid leave during COVID 19 pandemic, the employer may (but does not have to) grant such request.

Tokom trajanja neplaćenog odsustva zaposlenom miruju prava i obaveze iz radnog odnosa, odnosno neophodno je da poslodavac odjavi zaposlenog sa obaveznog socijalnog osiguranja.

5. Otkaz ugovora o radu usled tehnoloških, ekonomskih i/ili organizacionih promena

Kao poslednja i najekstremnija mera koju poslodavci mogu primeniti jeste otkazivanje ugovora o radu zaposlenima usled tehnoloških, ekonomskih i/ili organizacionih promena. Ukoliko pandemija COVID 19 dovede do ekonomske iscrpljenosti poslodavaca, usled smanjenog obima poslova ili potpunog prekida u obavljanju istih, poslodavac može odlučiti da pojedinim zaposlenima otkáže ugovor o radu po osnovu viška.

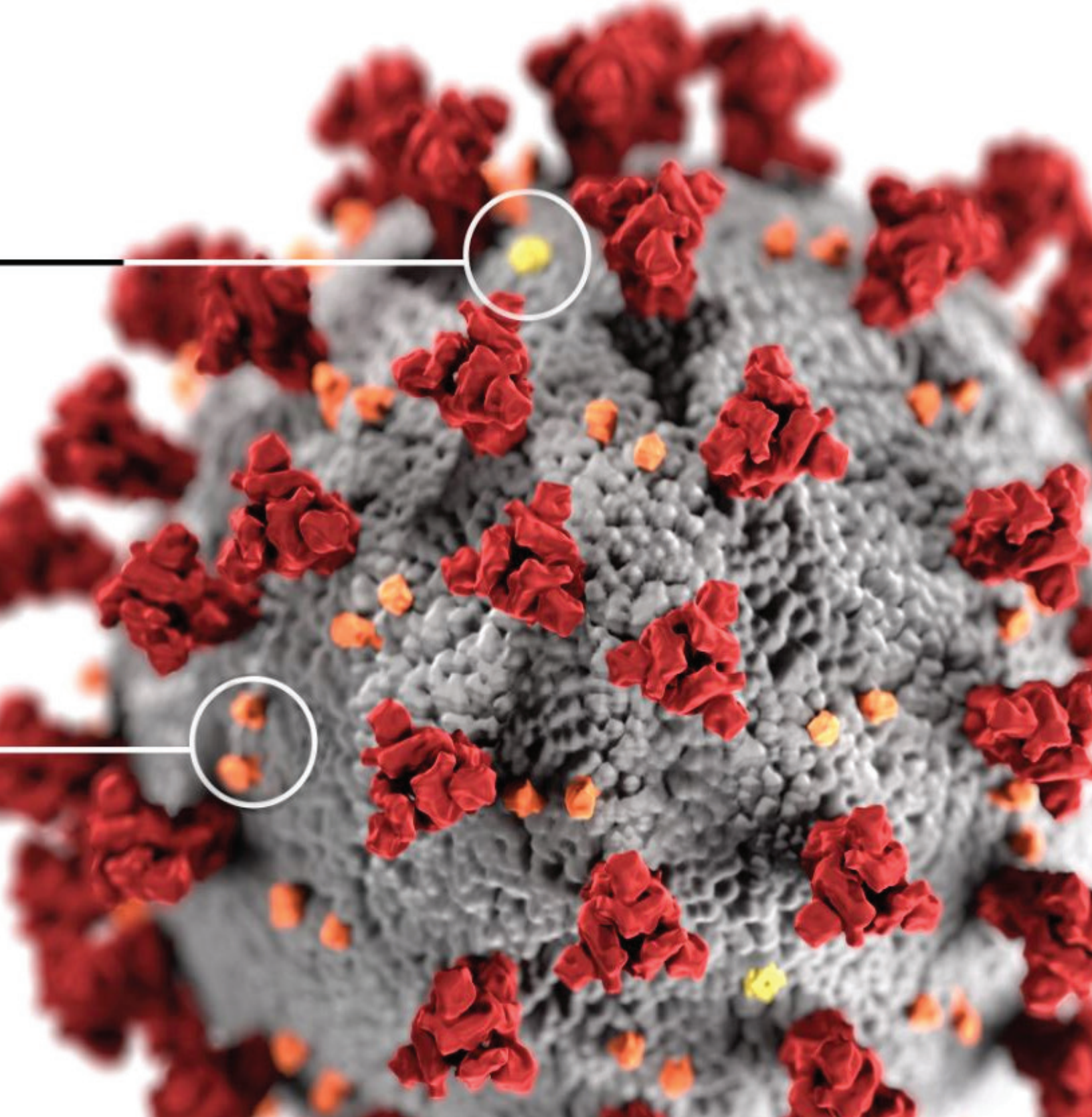
U slučaju da se poslodavci odluče na ovu meru, moraju poštovati odredbe Zakona o radu koje regulišu postupak utvrđivanja viška zaposlenih.

During unpaid leave, rights and obligations of the employee are suspended, i.e. it is necessary to deregister the employee from mandatory social insurance.

5. Termination of employment due to technological, economic and/or organizational changes

The final and most extreme measure that employers may use is employment termination due to technological, economic and/or organizational changes. In case COVID 19 pandemic leads to economic exhaustion of the employer, due to decrease of scope of work or complete termination of work, the employer may decide to terminate the employment agreement of certain employees based on redundancy.

In case employers decide to use this measure, provisions of the Labour law regulating redundancy procedure must be followed.



JPM

JANKOVIĆ POPOVIĆ MITIĆ

Vladimira Popovića 6 | NBGP Apartmani
11070 Beograd | Srbija | tel: +381 11 207 6850
fax: +381/11/207-6899
www.jpm.rs