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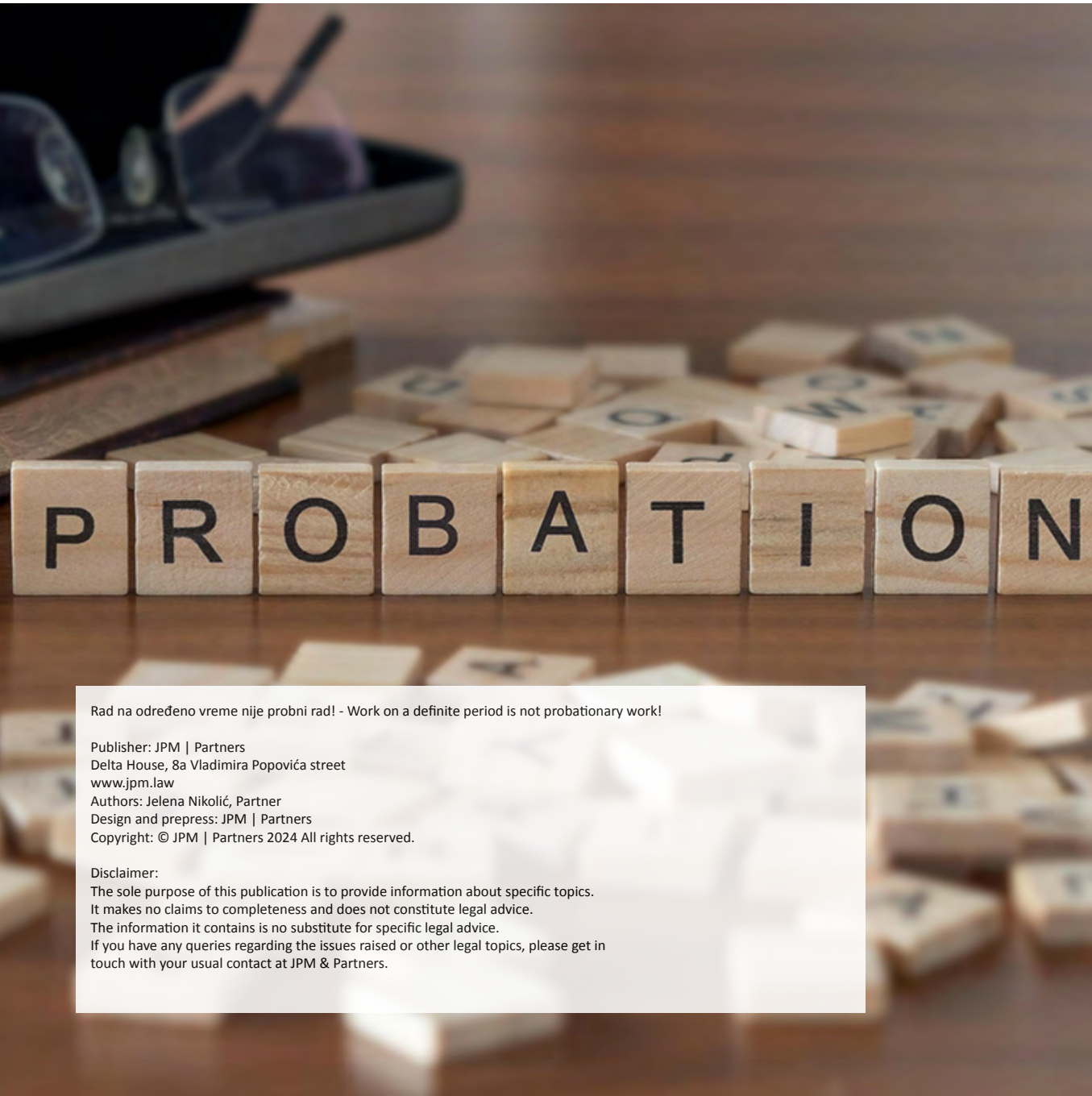


TURNING
POINT

RAD NA ODREĐENO VREME NIJE PROBNI RAD!
WORK ON A DEFINITE PERIOD IS NOT PROBATIONARY WORK!

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Rad na određeno vreme nije probni rad! - Work on a definite period is not probationary work!

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Nedovoljno precizne zakonske odredbe, neujednačena sudska praksa, kao i prosečna dužina trajanja radnih sporova, uticali su na stvaranje „straha od parničenja“ kod brojnih poslodavaca. Iz navedenih razloga umesto jednostranog otkaza ugovora o radu, čak i u slučajevima kada postoje čvrsti dokazi koji potvrđuju njegovu zakonitost i osnovanost, poslodavci teže sporazumnoj prestanku radnog odnosa, kao i isplati određene jednokratne naknade po tom osnovu.

Rizik u slučaju gubitka radnog spora za poslodavca svakako je veći u slučaju kada je zaposleni zasnovao radni odnos na neodređeno vreme, te ne čudi učestala praksa da se sa novozaposlenima radni odnos najpre zasniva na određeno vreme usled „privremenog povećanja obima posla“.

Insufficiently precise provisions of the law, unharmonized court practice, as well as the average duration of the employment disputes, were affected creating the “fear of litigation” amongst many employers. Due to the stated reasons, instead of unilateral employment termination, even in cases when there is firm evidence confirming its lawfulness and validity, the employers tend to execute the mutual agreement on employment termination, as well as to pay certain one-time compensation on the said basis.

The risk in case of losing employment dispute is definitely higher for the employer in case the employee established employment relation an indefinite period, due to which reason it is no surprise that it has become common practice to establish employment on definite period of time due to “temporary increase of scope of work” with new employees.

Imajući u vidu da je maksimalno trajanje probnog rada šest meseci, poslodavci nekada radom na određeno vreme zapravo produžavaju probni rad zaposlenog pre donošenja odluke da sa istim zasnuju radni odnos na nedoređeno vreme.

Ukoliko izuzmemo posebne slučajeve kada radni odnos na određeno vreme može biti zasnovan za period duži od 24 meseca (sa prekidima i bez prekida), Zakonom o radu predviđeno je da radni odnos na određeno vreme može biti zasnovan usled „objektivnih razloga koji su opravdani rokom ili izvršenjem određenog posla ili nastupanjem određenog događaja, za vreme trajanja tih potreba“.

Navedena zakonska odredba ukazuje na to da je reč o privremenoj potrebi poslodavca za obavljanjem određenih poslova ili angažovanjem dodatnih izvršilaca na postojećim poslovima, a što je poslodavac dužan da navede u samom ugovoru o radu – jedan od obaveznih elemenata ugovora o radu je osnov za zasnivanje radnog odnosa na određeno vreme.

Having in mind that the maximal duration of the probation work is six months, the employers sometimes prolong the probation work of the employees through work on a definite period, prior to making a decision to establish employment for an indefinite period with the employee in question.

If we exclude special cases when work on a definite period can be established for a period longer than 24 months (with and without interruptions), the Labour law stipulates that the employment relation on a definite period can be established due to “objective reasons that are justified by the deadline or by the execution of a certain job or the occurrence of a certain event, during the duration of those needs”.

The stated legal provision indicates that it refers to the employer’s temporary need to perform certain tasks or to engage additional executors for the existing tasks, which the employer is obliged to state in the employment agreement itself – one of the mandatory elements of the employment agreement is the basis for establishing the employment relation on definite period.

U slučaju da nisu ispunjeni Zakonom o radu propisani uslovi za zasnivanje radnog odnosa na određeno vreme, poslodavci su izloženi praktično istom riziku kao i u slučaju raskida radnog odnosa zasnovanog na neodređeno vreme.

Naime, Zakonom o radu propisano je da „ako je ugovor o radu na određeno vreme zaključen suprotno odredbama ovog zakona ili ako zaposleni ostane da radi kod poslodavca najmanje pet radnih dana po isteku vremena za koje je ugovor zaključen, smatra se da je radni odnos zasnovan na neodređeno vreme“.

Samim tim, ukoliko bi zaposleni mogao da dokaže da nije postojala objektivna potreba za radom na određeno vreme, već da postoji stalna potreba za obavljanjem konkretnih poslova kod poslodavca, odnosno većim brojem izvršilaca, tužbeni zahtev mogao bi da se odnosi ne samo na poništaj rešenja o otkazu ugovora o radu, već i na utvrđivanje postojanja radnog odnosa na neodređeno vreme.

Poslodavci bi iz napred navedenih razloga trebalo posebnu pažnju da obrate na ispunjenost ne samo formalnih uslova za zasnivanje radnog odnosa na određeno vreme, već i na postojanje stvarne potrebe za privremenim radnim angažovanjem pojedinca.

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Employers should pay special attention to the fulfilment of not only the formal conditions for establishing an employment relation on a definite period, but also the existence of an actual need for temporary engagement of an individual.

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In the event that the conditions prescribed by the Labor law for establishing employment relation on a definite period are not met, employers are exposed to practically the same risk as in case of termination of employment relation established on an indefinite period.

Namely, the Labor law stipulates that “if employment agreement on definite period is executed contrary to the provisions of this law or if the employee remains working for the employer for at least five working days after the end of the period for which the agreement was executed, it is considered as if the employment relation was established on indefinite period”.

Therefore, if the employee could prove that there was no objective need for the work on a definite period, but that there was a constant need to perform specific tasks for the employer, i.e. a greater number of executors, the claim could refer not only to the annulment of the resolution on termination of the employment agreement, but also to determine the existence of the employment relation on indefinite period.

Due to the aforementioned reasons, employers should pay special attention to the fulfilment of not only the formal conditions for establishing an employment relation on a definite period, but also the existence of an actual need for temporary engagement of an individual.

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