




Nacrt Zakona o izmjenama i dopunama Zakona o radu

Draft of Law on Amendments to the Labor Law

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Ministarstvo socijalnog rada i staranja Crne Gore je 16.04.2024. godine objavilo Izvještaj o sprovedenoj javnoj raspravi u okviru koje je pružena mogućnost za dostavljanje sugestija i primjedbi na nacrt Zakona o izmjenama i dopunama važećeg Zakona o radu. U susret Međunarodnom prazniku rada osvrnućemo se na neke od najvažnijih novina koje nam on donosi.

Cilj donošenja izmjena i dopuna je usaglašavanje postojeće zakonodavne regulative sa Direktivom EU o ravnoteži između privatnog i poslovnog života roditelja i pružatelja njege, Direktivom EU o transparentnim i predvidivim uslovima u EU i Evropskim Okvirnim sporazumom o radu na daljinu, kao i usaglašavanje sa domaćim zakonodavstvom, odnosno sa Zakonom o životnom partnerstvu lica istog pola.

On April 16, 2024, the Ministry of Labor and Social Welfare of Montenegro published a Report on the conducted public debate providing the opportunity for the public to submit suggestions and comments on the draft Law on Amendments to the current Labor Law. Ahead of International Labor Day, we'll discuss some of the most important changes it brings.

The aim of enacting the amendments is to harmonize the existing legislative framework with the EU Directive on the balance between the private and work life of parents and caregivers, the EU Directive on transparent and predictable conditions in the EU, and the European Framework Agreement on telework, as well as to harmonize with domestic legislation, specifically with the Law on Life Partnership of Same-Sex Persons.

Nacrtom zakona se trajanje probnog rada kod ugovora o radu na određeno vrijeme ne može ugovoriti za period duži od ¼ perioda na koji je ugovor zaključen, uz određene izuzetke (privremena spriječenost za rad, porodiljsko, roditeljsko, usvojiteljsko, hraniteljsko i očinsko odsustvo).

U cilju usaglašavanja sa Zakonom o životnom partnerstvu lica istog pola izjednačeni su pojmovi supružnik i životni partner, bračni status i status životnog partnera, vanbračna djeca i djeca životnog partnera i slično.

Zanimljivo je osvrnuti se na uvođenje instituta očinskog odsustva kojim se očevima daje pravo da odsustvuju sa posla 10 radnih dana od rođenja djeteta, što predstavlja razliku u odnosu na dosadašnje zakonodavno rješenje koje je na posredan način regulisalo ovo pravo, kroz institut plaćenog odsustva koji je bio bliže uređen kolektivnim ugovorima, te Opšti kolektivni ugovor predviđa pravo zaposlenog na plaćeno odsustvo za slučaj rođenja djeteta u trajanju od tri radna dana.

The draft law stipulates that the duration of the probationary period in fixed-term contracts cannot be agreed upon for a period longer than ¼ of the contract period, with certain exceptions (temporary incapacity for work, maternity, parental, adoptive, foster, and paternal leave).

To align with the Law on Life Partnership of Same-Sex Persons, the terms spouse and life partner, marital status and status of life partner, extramarital children, and life partner's children, etc. have been equalized.

It's interesting to note the introduction of paternity leave, granting fathers the right to work absence for 10 working days from the birth of a child, which differs from the previous legislative solution which indirectly regulated the matter of paternity leave through the institute of paid leave, which was more closely regulated by collective agreements. The General Collective Agreement provides for the right of the employee to paid leave in case of childbirth for three working days.

Nacrt donosi izmjene i u pogledu roditeljskog odsustva, te se propisuje minimalno trajanje roditeljskog odsustva od dva mjeseca koje se ne može prenijeti sa jednog roditelja na drugog. Izričitim regulisanjem očinskog odsustva stimuliše se ravnopravnija podjela obaveza između muškaraca i žena u odgajanju djeteta, i podstiče se ranije formiranje emotivne veze između oče-va i djece. S druge strane, otvara se put ka tome da očevi efektivno koriste pravo na odsustvo, a novo zakonsko rješenje je i značajno fleksibilnije od prethodnog u pogledu načina korišćenja ovog odsustva.

Pravo na plaćeno odsustvo zaposleni će imati radi nesrećnog slučaja koji se odnosi na urgentan porodični razlog u slučaju nesreće zbog koje je potrebna hitna prisutnost zaposlenog, u trajanju od tri radna dana i na neplaćeno odsustvo sa rada u ukupnom trajanju od pet radnih dana godišnje za pružanje njege članu uže porodice kojom je njega potreba zbog ozbiljnog zdravstvenog razloga. Kritika predloženih zakonodavnih rješenja odnosi se na činjenicu da je izostalo jasno definisanje pojmova „nesrećan slučaj“, „urgentan porodični razlog“, „ozbiljan zdravstveni razlog“, što bi moglo dovesti do problema u praksi kada je u pitanju tumačenje istih, imajući u vidu preširoke formulacije.

The draft introduces changes regarding parental leave, prescribing a minimum duration of parental leave of two months, which cannot be transferred from one parent to another. Explicit regulation of fathers' rights to paternity leave stimulates equal distribution of responsibilities between men and women in childcare and encourages an earlier formation of emotional bonds between fathers and their children. On the other hand, it paves the way for fathers to effectively use the right to leave, and the new legal solution is significantly more flexible than the previous one regarding the way this leave is used.

Employees will have the right to paid leave for an unfortunate incident related to an urgent family reason in the event of an accident requiring the urgent presence of the employee, for a duration of three working days, and unpaid leave of up to five working days per year for caring for a close family member who needs care due to a serious health reason. Proposed legislative solutions can be criticized concerning the lack of definition and clearer specification of the terms “unfortunate incident,” “urgent family reason,” and “serious health reason,” which could lead to problems in practice due to overly broad formulations.

Sugestije koje nijesu prošle javnu raspravu između ostalog, se odnose na uvođenje dvije nove obaveze poslodavca u članu 19 važećeg Zakona o radu, a to su obaveza poslodavca da usvoji i sprovede politike o nasilju i uznemiravanju na radnom mjestu i obaveza da osigura da žrtve rodno zasnovanog nasilja i uznemiravanja na radu i u vezi sa radom imaju pristup rodno osjetljivim, sigurnim i djelotvornim mehanizmima zaštite svojih prava. Pomenuti predlozi su u skladu sa C190-Konvencijom protiv nasilja i uznemiravanja iz 2019. (br.190) koja za cilj ima uspostavljanje mehanizama za prevenciju nasilja i uznemiravanja na radnom mjestu, a koju Crna Gora nije ratifikovala.

Nadalje, pažnju privlači detaljnije regulisanje pitanja rad od kuće. Članom 10 Nacrta predviđa se izmjena kojom se uvodi obaveza da se rad od kuće predvidi opisom poslova tog radnog mjesta, dok je do sada rad od kuće bio predmet konsenzusa poslodavca i zaposlenog.

Predloženo rješenje može se kritikovati u smislu da se na ovaj način donekle ograničava pravo poslodavaca i zaposlenih da urede rad od kuće na način koji je najprilagođeniji organizaciji poslova, budući da je akt o sistematizaciji radnih mjesta obavezujućeg karaktera.

Some of the suggestions did not pass the public debate, such as, among other things, the introduction of two new obligations of the employer in Article 19 of the current Labor Law, namely the obligation of the employer to adopt and implement policies on violence and harassment in the workplace and the obligation of the employer to ensure that victims of gender-based violence and harassment in or related to work have access to gender-sensitive, safe, and effective mechanisms for protecting their rights. These proposals are in line with Convention C190 on Violence and Harassment from 2019, which aims to establish mechanisms for preventing violence and harassment in the workplace, that Montenegro has not ratified.

Furthermore, attention is drawn to the more detailed regulation of telework. By amending Article 10 of the Draft, an obligation is introduced to specify telework through a job description, whereas telework was previously subject to the consensus of the employer and the employee.

The proposed solution can be criticized in terms of somewhat limiting the right of employers and employees to organize telework in a way that is most suitable for the organization of work, as the job classification document is binding.

Nacrtom se propisuje pravo poslodavca da uđe u stan zaposlenog ili neki drugi prostor radi vršenja nadzora odnosno pravo inspekcije rada da sprovede inspekcijski nadzor, pri čemu su oba nadzora uslovljena postojanjem saglasnosti zaposlenog.

Ovako formulirano zakonsko rješenje je u suprotnosti sa ustavnim i konvencijskim pravom na nepovredivost stana, što znači da bi adekvatnije rješenje bilo izričito navođenje opravdanih razloga koji derogiraju pravo na nepovredivost stana za sve vrste nadzora.

Dodatno se postavlja pitanje cjelishodnosti vršenja nadzora uslovljenog saglasnošću zaposlenog. Nacrtom se predviđa izmjena starosne granice za ostvarivanje prava na penziju, te se članom 29 propisuje da zaposleni ostvaruje pravo na penziju sa navršениh 67 godina života, a ne sa navršениh 66 godina života, što je bilo dosadašnje zakonsko rješenje.

Odredba je nastala kao rezultat konsenzusa tripartitne radne grupe koji je postignut radi uspostavljanja jednakih uslova za prestanak radnog odnosa po sili zakona u javnom i privatnom sektoru.

The draft provides for the employer's right to enter the employee's apartment or another space for inspection and the right of the labor inspectors to conduct inspection supervision, which are both conditioned by the employee's consent.

Namely, it can be concluded that this formulation of the legal solution contradicts the constitutional and conventional right to inviolability of the home, which means that a more adequate solution would be to explicitly list justified reasons that derogate from the right to inviolability of the home.

Additionally, the question arises about the feasibility of conducting unannounced inspections when such inspections are conditioned by the consent of the employee. The draft proposes changing the age limit for entitlement to pension, with Article 29 stipulating that an employee is entitled to a pension at the age of 67, rather than at the age of 66, which was the previous legal solution.

The provision arose as a result of a consensus reached by the tripartite working group to establish equal conditions for terminating employment by operation of law in the public and private sectors.

Razlog za ovakav predlog jeste usaglašavanje važećeg Zakona o radu i Zakona o državnim službenicima i namještenicima. Međutim, radna grupa ostaje nedorečena u dijelu obrazloženja zbog čega je važno da zakonska starosna granica za ostvarivanje prava na penziju bude određena na 67 godina života.

Ostaje da se vidi šta će nakon rasprave u Skupštini Crne Gore, ući u konačan tekst propisa.

The reason for this proposal is to align the current Labor Law with the Law on Civil Servants and Employees. However, the working group remains vague in explaining why it is important for the legal retirement age to be set at 67.

It remains to be seen what will enter the final text of the regulation after the debate in the Parliament of Montenegro.

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