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za kretanje ili fama iz interesa?**
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Required, or a Fake News for Clickbait?**

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Publisher: JPM | Partners
Delta House, 8a Vladimira Popovića street
www.jpm.law
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Design and prepress: JPM | Partners
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I kakve veze ima pitanje digitalne agende u Srbiji sa pitanjima iz naslova iz ovog članka? Jedini način da utvrdimo (ne) postojanje veze je da vidimo šta piše u dokumentima koje su bili u obavezi da izrade rukovaoci podacima o ličnosti u vezi sa bolovanjem radnika i da regulator sprovede adekvatan nadzor.

I da li je istina da je zakonodavac propisao da su radnici na bolovanju ne mogu da napuštaju prebivalište?

And what does the issue of the digital agenda in Serbia have to do with the questions raised in the title of this article? The only way to determine whether such a connection exists is to examine what is stated in the documents that controllers are required to prepare regarding workers' personal data in connection with sick leave, and for the regulator to conduct appropriate oversight.

And is it true that the legislator has prescribed that workers on sick leave are not allowed to leave their place of residence?

I Članak na dnevnom portalu – fama ili istina?

Povod za ovaj članak je vest u jednom na jednom dnevnom portalu u Srbiji da granična policija trudnici nije dozvolila da napusti zemlju i da je ovu odluku donela na osnovu pristupa podacima o ličnosti iz softverskog rešenja „E-bolovanje - Poslodavac“. Link na Instagramu u vezi sa ovim događajem ubrzo nestao, a javnost je počela da se pita da li je moguće da granična policija ima pristup podacima o ličnosti u softverskom rešenju „E-bolovanje - Poslodavac“, da li je moguće da nadležni organi u sistemu zdravstvenog osiguranja i doktori zabrane kretanje radnicima na bolovanju i kakve veze sa ograničenjem kretanja ima granična policija.

Nije prvi put da se uklanjaju linkovi na društvenim mrežama i vesti u vezi sa problemima u upravljanju podacima o ličnosti. Pre nekoliko godina je objavljena vest da je došlo do interne povrede podataka u jednoj od bolnica, a već sledećeg dana vest iz svih medija je uklonjena.

I An Article on a Daily News Portal – Clickbait or Truth?

The impetus for this article is news on a daily portal in Serbia claiming that border police did not allow a pregnant woman to leave the country, allegedly based on access to personal data from the software solution “E-Sick Leave – Employer.” The Instagram link related to this event soon disappeared, and the public began to wonder whether it is possible that border police have access to personal data within the “E-Sick Leave – Employer” system, whether competent authorities within the health insurance system and doctors can restrict the movement of workers on sick leave, and what connection, if any, the border police have with limiting freedom of movement.

This is not the first time that links on social media and news related to issues in personal data management have been removed. A few years ago, news was published about an internal data breach in one of the hospitals; the very next day, the report was removed from all media.

Kancelarija za informacione tehnologije i elektronsku upravu (rukovalac podacima o ličnosti u softverskom rešenju „E-bolovanje – Poslodavac“) je objavila „da trudnicama ni u kom slučaju nije uskraćeno pravo da putuju ili napuštaju teritoriju Republike Srbije zbog korišćenja sistema „E-Bolovanje-Poslodavac“ („Softversko rešenje“). Podaci o privremenoj sprečenosti za rad trudnica, dostupni su preko ovog sistema isključivo njihovom poslodavcu i nijedan državni organ pristup ovim podacima“.

Vest na portalu je upitna. Sam naslov vesti „TRUDNICA IZ SRBIJE VRAĆENA SA GRANICE JER JE NA BOLOVANJU? Kažu da nije imala jedan papir“ i formulacija u vesti da „trudnicama na bolovanju nije dozvoljen izlazak iz Srbije bez odobrenja lekara ili komisije Republičkog fonda za zdravstveno osiguranje prema Zakonu o zdravstvenom osiguranju i da ovo pitanje dobija na značaju jer su „nakon uvođenja „e-bolovanja“ podaci dostupni i graničnoj policiji, što omogućava strožu kontrolu“ su konfuzni jer je nejasno koji papir je nedostajao trudnici da bi napustila zemlju i u kakvoj je vezi činjenica da trudnicama na bolovanju nije dozvoljen izlazak iz Srbije bez odobrenja lekara ili komisije Republičkog fonda za zdravstveno osiguranje sa Softverskim rešenjem.

The Office for Information Technologies and eGovernment (the controller of personal data within the “E-Sick Leave – Employer” system) stated that “under no circumstances have pregnant women been denied the right to travel or leave the territory of the Republic of Serbia due to the use of the ‘E-Sick Leave – Employer’ system (“the Software solution”). Data on temporary incapacity for work of pregnant women, available through this system, are accessible exclusively to their employer, and no state authority has access to them.”

The news on portal is questionable. The headline itself — “PREGNANT WOMAN FROM SERBIA TURNED BACK AT THE BORDER BECAUSE SHE IS ON SICK LEAVE? They say she did not have one document” — and the statement in the article that “pregnant women on sick leave are not allowed to leave Serbia without approval from a doctor or a Commission of the Republic Health Republic Fund, pursuant to the Health Insurance Law, and that this issue is gaining importance because “after the introduction of “e-sick leave”, the data are also available to the border police, enabling stricter control’ are confusing. It is unclear which document the pregnant woman allegedly lacked in order to leave the country, and how the claim that pregnant women on sick leave cannot leave Serbia without approval from a doctor or the commission of the Republic Health Republic Fund is connected to the Software solution.

Softversko rešenje je uspostavljeno isključivo u svrhu razmene podataka između zdravstvenih ustanova, poslodavca i Republičkog fonda za zdravstveno osiguranje u postupku ostvarivanja prava radnika po osnovu privremene sprečenosti za rad.

Ciljevi i očekivani efekti primene softverskog rešenja su efikasna razmena informacija u vezi sa sprečenošću za rad na nivou izabrani lekar – poslodavac – Republički fond za zdravstveno osiguranje unapredila (sprovodi se preuzimanje podataka iz IKT sistema zdravstvenih ustanova u ovo softversko rešenje), definisanje uloga odgovornih aktera, zaštita privatnosti radnika i njihovih podataka o ličnosti, povećanje efikasnosti rada u zdravstvenim ustanovama, smanjenje troškova za vođenje papirne dokumentacije, smanjenje redova u zdravstvenim ustanovama, grešaka u vođenju dokumentacije, opterećenja zdravstvenih radnika, rizika i zloupotrebe u ostvarivanju prava usled privremene sprečenosti za rad.

The Software solution was established exclusively for the purpose of exchanging data between healthcare institutions, employers, and the Republic Health Insurance Fund within the process of exercising workers' rights arising from temporary incapacity for work.

The objectives and expected effects of implementing this Software solution include efficient information exchange regarding incapacity for work at the level of the selected physician – employer – Republic Fund of Health Insurance (retrieval of personal data from healthcare institutions' ICT systems into this software solution is carried out), clear definition of the roles of responsible stakeholders, protection of workers' privacy and personal data, increased efficiency in the work of healthcare institutions, reduction of costs related to paper-based documentation, reduction of queues in healthcare institutions, fewer errors in record-keeping, decreased burden on healthcare workers, reduced risks and abuse in exercising rights based on temporary incapacity for work.

U trenutku kada se pojavila vest na portalu, u skladu sa Zakonom o razmeni podataka, dokumenata i obaveštenja u slučaju nastupanja privremene sprečenosti za rad korišćenjem softverskog rešenja "E-Bolovanje - Poslodavac" ("Sl. glasnik RS", br. 109/2025) – („Zakon“) i Pravilnikom o razmeni podataka, dokumenata i obaveštenja korišćenjem softverskog rešenja "E-bolovanje - Poslodavac" ("Sl. glasnik RS", br. 121/2025) – („Pravilnik“), korisnik (poslodavac) ima pristup sledećim podacima o ličnosti:

1. podacima o ličnosti radnika, i to: ime i prezime, jedinstveni matični broj građanina (JMBG), odnosno evidencijski broj za strance (EBS), lični broj osiguranika (LBO);
2. podacima o privremenoj sprečenosti za rad: naziv uzroka, status, datum početka, očekivanog trajanja i zatvaranja, broj dana, ime i prezime izabranog lekara, naziv i šifra zdravstvene ustanove, naziv vodeće dijagnoze, identifikator dijagnoze;
3. podacima o doznaci: redni broj, period, stacionarno lečenje, prouzrokovalo treće lice, recidiv, spoljni uzrok povrede;
4. statusu privremene sprečenosti za rad.

At the time the news appeared on the portal, in accordance with the Law on the Exchange of Data, Documents and Notifications in the Event of Temporary Incapacity for Work through the Use of the software solution "E-Sick Leave – Employer" ("Official Gazette of the Republic of Serbia", No. 109/2025) ("the Law") and the Rulebook on the Exchange of Data, Documents and Notifications through the Use of the software solution "E-Sick Leave – Employer" ("Official Gazette of the Republic of Serbia", No. 121/2025) ("the Rulebook"), the user (employer) has access to the following personal data:

1. Personal data of the worker, namely: first and last name, unique citizen identification number (JMBG), or foreigner registration number (EBS), personal insurance number (LBO);
2. Data on temporary incapacity for work: name of the cause, status, start date, expected duration and end date, number of days, first and last name of the chosen physician, name and code of the healthcare institution, name of the primary diagnosis, diagnosis identifier;
3. Data on the medical certificate: serial number, period, inpatient treatment, caused by a third party, recurrence, external cause of injury;
4. Status of temporary incapacity for work.

Prema Zakonu, dijagnoza se obrađuje samo u slučaju nastupanja privremene sprečenosti za rad radnika, a podatak o dijagnozi, odnosno o bolesti na osnovu kojih radnik može ostvariti prava po osnovu privremene sprečenosti za rad, dostavlja se, odnosno čini se dostupnim poslodavcu isključivo na zahtev radnika, uz primenu mera zaštite podataka koje omogućavaju zaštićeni uvid u podatke lica na koje se podaci odnose.

Niko osim poslodavca ne bi trebalo da ima pristup navedenim podacima o ličnosti.

Od 01.04.2026. godine je u softverskom rešenju aktivan modul „Prigovori i zahtevi“ – reč je mogućnosti da poslodavci preko softverskog rešenja podnesu prigovor na ocenu izabranog lekara ili prvostepene lekarske komisije o privremenoj sprečenosti za rad, prigovor na ocenu prvostepene lekarske komisije, kao i zahtev za ponovno ocenjivanje privremene sprečenosti za rad. U svrhu podnošenja prigovora i zahteva, omogućeno je preuzimanje podataka u vezi sa prigovorom i zahtevom iz integrisanog zdravstvenog sistema. Napominjemo da poslodavci nemaju pristup sadržini ocena već samo podacima koji se odnose na status dokumenata (npr. broj ocene i datum izrade ocene).

According to the Law, the diagnosis is processed only in the case of temporary incapacity for work of the worker, and information on the diagnosis, i.e. the illness on the basis of which the worker may exercise rights related to temporary incapacity for work, is provided or made available to the employer exclusively at the request of the worker, with the application of data protection measures that ensure secure access to the data of the data subject.

No one other than the employer should have access to the aforementioned personal data.

As of April 1, 2026, the software solution includes an active module “Complaints and Requests,” which enables employers to submit, through the system, a complaint against the assessment of the chosen physician or the first-instance medical commission regarding temporary incapacity for work, a complaint against the assessment of the first-instance medical commission, as well as a request for reassessment of temporary incapacity for work. For the purpose of submitting complaints and requests, the system allows retrieval of data related to such complaints and requests from the integrated healthcare system. It should be noted that employers do not have access to the content of the assessments, but only to data relating to the status of documents (e.g., assessment number and date of issuance).

Sa druge strane, smatramo da je vest, odnosno informacija na portalu dovoljan razlog da Poverenik sprovede nadzor nad obradom podataka od strane granične policije i Kancelarije za informacione tehnologije i elektronsku upravu („Kancelarija“) i da utvrdi u kakvoj je vezi navodna zabrana trudnici da napusti teritoriju Srbije sa obradom podataka od ličnosti granične policije u softverskom rešenju.

Ovo naročito iz razloga što sistemsko rešenje ne sadrži podatke koji se odnose zabrane napuštanja prebivališta od strane radnika za vreme bolovanja). Bez obzira na upitnost vesti, mogućnost da granična policija ima pristup softverskom rešenju i moguća tumačenja primenljivih propisa od strane granične inspekcije su sami po sebi alarmantni.

On the other hand, we consider that the news on portal itself provides sufficient grounds for the Commissioner to conduct supervision over the processing of personal data by the border police and the Office for Information Technologies and eGovernment (“the Office”), and to determine how the alleged prohibition on a pregnant woman leaving the territory of Serbia is related to the processing of personal data by the border police within the software solution.

This is particularly important given that the system, as designed, does not contain data relating to any prohibition on workers leaving their place of residence while on sick leave. Regardless of the questionable nature of the news report, the mere possibility that the border police might have access to the software solution, as well as potential interpretations of applicable regulations by the border inspection authorities, is in itself alarming.

II Zaštita privatnosti i podataka o ličnosti radnika u softverskom sistemu

Da bismo došli do dodatnih informacija, podneli smo zahtev za slobodan pristup informacijama od javnog značaja Povereniku za informacije od javnog značaja i zaštitu podataka o ličnosti („Poverenik“) sa pitanjima da li je Poverenik sprovodio inspekcijski nadzor u vezi sa ovim pitanjem, i ukoliko jeste, da nam dostavi dokumentaciju u vezi sa nadzorom, da li je Kancelarija dostavila Povereniku procenu uticaja na zaštitu podataka o ličnosti i ukoliko jeste da nam dostavi procenu i drugu dokumentaciju/korespondenciju u vezi sa procenom. Takođe smo uputili zahtev za slobodan pristup informacijama Kancelariji i Ministarstvu zdravlja i tražili da nam dostave procene uticaja za obradu podataka u softverskom rešenju „E-bolovanje – Poslodavac“ i „E-Zdravlje“.

Razlog obraćanja Ministarstvu zdravlja je taj što je u Obaveštenju Kancelarije o otpočinjanju izrade Nacrta Zakona navedeno da je ovo softversko rešenje deo sistema „E-Zdravlje“ u širem smislu.

Dobili smo odgovor od Poverenika da do sada Poverenik nije sprovodio inspekcijski nadzor niti da je Kancelarija dostavila Povereniku procenu uticaja na zaštitu podataka o ličnosti.

II Protection of Privacy and Personal Data of Workers within the Software System

In order to obtain additional information, we submitted a request for access to information of public importance to the Commissioner for Information of Public Importance and Protection of Personal Data (“Commissioner”), asking whether supervisory inspection in relation to this matter is conducted and, if so, to provide the relevant documentation. We also requested information on whether the Office had submitted a data protection impact assessment to the Commissioner and, if so, to provide that assessment and any related documentation or correspondence. In addition, we submitted requests for access to information of public importance to the Office and the Ministry of Health, requesting that they provide data protection impact assessments for the processing of data within the “E-Sick Leave – Employer” and “E-Health” software solutions.

The reason for addressing the Ministry of Health is that, in the Office’s Notice on the initiation of drafting the Law, it is stated that this software solution forms part of the broader “E-Health” system.

We received a response from the Commissioner stating that, so far, the Commissioner has not carried out an inspection supervision, nor has the Office submitted to the Commissioner a data protection impact assessment.

Neposredno pre objavljivanja ovog članka nam je Kancelarija dostavila procenu uticaja na zaštitu podataka. Ovom temom ćemo se baviti u nekom narednih članaka.

U procenama bi trebalo da budu opisane sve radnje obrade (između ostalog i prenos, odnosno pristup drugim državnim organima) u pomenutim softverskim rešenjima, sprovedena procena neophodnosti i srazmernosti vršenja radnji obrade u odnosu na svrhe obrade, procena rizika za prava i slobode lica na koje se podaci odnose i opisane mera koje se nameravaju preduzeti u odnosu na postojanje rizika, uključujući mehanizme zaštite, kao i tehničke, organizacione i kadrovske mere u cilju zaštite podatka o ličnosti i obezbeđivanja dokaza o poštovanju odredbi ovog zakona, uzimajući u obzir prava i legitimne interese lica na koje se podaci odnose i drugih lica.

Dodatni razlog za podnošenje zahteva je i taj što je reč o velikoj koncentraciji posebnih kategorija podataka o ličnosti na jednom mestu tako da je veoma bitno da se adekvatan način procene rizici za prava i slobode radnika i preduzmu adekvatne mere za zaštitu prava i sloboda građana.

Immediately prior to the publication of this article, the Office provided us with a data protection impact assessment. We will address this topic in one of our forthcoming articles.

These assessments should describe all processing operations (including, among other things, transfers or access by other state authorities) within the aforementioned software solutions, include an evaluation of the necessity and proportionality of the processing in relation to its purposes, an assessment of the risks to the rights and freedoms of data subjects, and a description of the measures envisaged to address those risks. This includes safeguards, as well as technical, organizational, and personnel measures aimed at protecting personal data and ensuring evidence of compliance with the law, taking into account the rights and legitimate interests of data subjects and others.

An additional reason for submitting these requests is the high concentration of special categories of personal data in a single system, making it essential to properly assess risks to the rights and freedoms of workers and to adopt appropriate protective measures.

U softverskom rešenju se sprovodi automatizovana obrada podataka o ličnosti koja ima uticaja na prava i slobode građana (automatsko slanje izveštaja o privremenoj sprečenosti za rad i odluka u postupcima po prigovorima i zahtevima na ocene izabranih lekara i prvostepenih lekarskih komisija), tako da smo zainteresovani kako su procenjeni rizici automatizovane obrade.

Na kraju, u Pravilniku su navedene adekvatne mere zaštite, ali bitno je da istaknemo da se mere određuju na osnovu procene rizika informacione bezbednosti i procene uticaja na zaštitu podataka o ličnosti i da su samo one mere koje proizlaze iz ovih procena adekvatne identifikovanim i procenjenim rizicima.

The software solution involves automated processing of personal data that affects the rights and freedoms of individuals (such as the automatic retrieval of reports on temporary incapacity for work and decisions in procedures concerning complaints and requests related to assessments by selected physicians and first-instance medical commissions), and we are therefore particularly interested in how the risks associated with such automated processing have been assessed.

Finally, while the Rulebook sets out certain protection measures, it is important to emphasize that such measures must be determined on the basis of an information security risk assessment and a data protection impact assessment, and that only those measures derived from these assessments can be considered adequate in addressing the identified and evaluated risks.

III Napuštanje prebivališta za vreme bolovanja – gubitak naknade zarade i zloupotreba bolovanja?

Više puta smo se pitali ko kreira fame i došli smo do zaključka da fame kreiraju oni kojima su fame u interesu. Fame su najčešće zasnovane na iracionalnom strahu od odmazdi zbog mogućih posledica ukoliko se postupa protivno famama.

Pomenuta vest da je trudnicama zabranjeno da napuštaju zemlju bez odobrenja izabranog lekara ili komisije Republičkog fonda za zdravstveno osiguranje i da su kontrole strožije usled uvođenja softverskog rešenja je jedna od fama, a posebno iz razloga što su odredbe Zakona o zdravstvenom osiguranju do te mere nejasne da radnici ne mogu ni da znaju kako je potrebno da na tim odredbama postupaju.

Ova fama je zasnovana prvenstveno na iracionalnom strahu radnika da napuštanje mesta prebivališta za vreme bolovanja u svakom pojedinačnom slučaju može da dovede otkaza ugovora o radu, zabrane prelaska državne granice i gubitka prava na naknadu za zaradu za vreme bolovanja. Fama o zabrani prelaska državne granice je još veća usled vesti da granična policija ima pristup podacima o ličnosti iz Softverskog rešenja.

III Leaving the Place of Residence During Sick Leave – Loss of Salary Compensation and Abuse of Sick Leave?

We have often asked ourselves who creates fake news, and have come to the conclusion that they are created by those who benefit from them. Such fake news are most often based on irrational fear of retaliation and potential consequences if one acts contrary to them.

The aforementioned news claiming that pregnant women are not allowed to leave the country without approval from a chosen physician or the Health Insurance Fund commissions, and that controls have become stricter due to the introduction of the software solution, is one such fake news, and especially because the provisions of the Law on Health Insurance are so unclear that employees cannot even know how they are required to act in accordance with those provisions.

This fake news is primarily based on the irrational fear among workers that leaving their place of residence during sick leave may, in every case, lead to termination of employment, prohibition of crossing the state border, and loss of the right to salary compensation during sick leave. The fake news of a ban on crossing the state border has been further amplified by news suggesting that border police have access to personal data from the Software solution.

Da je reč o fami ukazuje i to da je informacija iz pomenute vesti uopštena i nejasna i da se taj portal, nakon objavljivanja te vesti, nije više bavio ovom temom i pružio građanstvu dodatne informacije o povezanosti podatka o ličnosti iz Softverskog rešenja i uskraćivanje prava na kretanje. Ukazujemo i to da se dokument u kome se navodi terapija ne sadrži u softverskom rešenju niti se preuzima iz integrisanog zdravstvenog sistema u softversko rešenje.

Članom 84 stav 1 tačka 7 Zakona o zdravstvenom osiguranju ("Sl. glasnik RS", br. 25/2019, 92/2023 i 109/2025 - dr. zakon) propisano je da radniku koji je privremeno sprečen za rad ne pripada pravo na naknadu zarade ako:

- a) bez dozvole stručno-medicinskog organa Republičkog fonda za zdravstveno osiguranja otpuže iz mesta prebivališta, odnosno boravišta ili
- b) ako izabrani lekar, odnosno organ nadležan za kontrolu ostvarivanja prava iz obaveznog zdravstvenog osiguranja utvrdi da ne postupa po uputstvu za lečenje.

The fact that this is indeed a fake news is also supported by the vague and generalized nature of the information in the news report, as well as the fact that the portal did not further address the issue or provide additional clarification to the public regarding any connection between personal data from the Software solution and restrictions on freedom of movement. It should also be emphasized that a document containing prescribed therapy is neither contained in the software solution nor retrieved from the integrated healthcare system into it.

Pursuant to Article 84 paragraph 1 item 7 of the Health Insurance Law ("Official Gazette RS", no. 25/2019, 92/2023 i 109/2025 – other law), a worker who is temporarily unable to work is not entitled to salary compensation if:

- a) they leave their place of residence or stay without the approval of a professional-medical body of the Republic Health Insurance Fund, or
- b) if the chosen physician or the competent authority for controlling the exercise of rights under mandatory health insurance determines that the worker is not acting in accordance with prescribed treatment instructions.

Članom 179 stav 3 tačka 2 Zakona o radu ("Sl. glasnik RS", br. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - odluka US, 113/2017, 95/2018 - autentično tumačenje i 109/2025 - dr. zakon) propisano je da poslodavac može da otkáže ugovor o radu radniku koji ne poštuje radnu disciplinu, odnosno ako zloupotrebi pravo na odsustvo zbog privremene sprečenosti za rad.

Stručno – medicinski organi Republičkog fonda za zdravstveno osiguranje („RFZO“) u postupku ostvarivanja prava po osnovu privremene sprečenosti za rad su izabrani lekar, prvostepena i drugostepena lekarska komisija.

Izabrani lekar utvrđuje privremenu sprečenost za rad radnika do 30 dana, odnosno do 60 dana sprečenosti za rad, osim u slučajevima iz člana 78. Zakona o zdravstvenom osiguranju i predlaže prvostepenoj, odnosno drugostepenoj lekarskoj komisiji produženje privremene sprečenosti za rad.

Prvostepena lekarska komisija donosi odluke:

1. o produženju bolovanja nakon isteka 30, odnosno 60 dana (na predlog izabranog lekara);
2. o prigovorima radnika i poslodavaca na ocenu izabranog lekara o privremenoj sprečenosti za rad osiguranika do 30 dana, odnosno do 60 dana i

Pursuant to Article 179 paragraph 3 item 2 of the Labour Law ("Official Gazette of RS", nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Decision of the Constitutional Court, 113/2017, 95/2018 – authentic interpretation and 109/2025 – other law), an employer may terminate the employment contract of a worker who fails to comply with work discipline, including in cases of abuse of the right to leave due to temporary incapacity for work.

Professional medical bodies of the Republic Health Insurance Fund ("RHIF") in the procedure for exercising rights based on temporary incapacity for work are: the designated physician, the first-instance medical commission, and the second-instance medical commission.

The designated physician determines temporary incapacity for work for up to 30 days, or up to 60 days, except in cases referred to in Article 78 of the Law on Health Insurance, and proposes to the first-instance or second-instance medical commission the extension of temporary incapacity for work.

The first-instance medical commission makes decisions on:

1. the extension of sick leave after the expiration of 30 or 60 days (upon the proposal of the designated physician);
2. objections submitted by employees and employers against the assessment of the designated physician regarding temporary incapacity for work up to 30 or 60 days;

3. vrši ponovno ocenjivanje privremene sprečenosti za rad radnika čiju je privremenu sprečenost za rad ocenio izabrani lekar.

Drugostepena lekarska komisija donosi odluke o prigovoru samo protiv ocene prvostepene lekarske komisije donete bez prethodne ocene izabranog lekara.

Formulacija „ako bez dozvole ako bez dozvole stručno-medicinskog organa Republičkog fonda za zdravstveno osiguranje napusti mesto prebivališta odnosno boravišta“ je upitna iz više razloga.

S obzirom da je reč o jednom od osnovnih ljudskih prava (pravo na slobodu kretanja) i da je ostvarivanje ovog prava uslovljeno gubitkom prava na naknadu zarade za vreme bolovanja, postavlja se pitanje da li se prava građana mogu ograničavati i uslovljavati, a da nijednim primenjivim propisom nije regulisan postupak izdavanja dozvole. Nadalje, radnici bi morali da imaju pravo na delotvorni pravni lek ukoliko smatraju da je im je pravo na slobodu kretanja ograničeno.

Nedostatak pomenutog postupka rezultira time da radnici ne znaju kome se podnosi zahtev za izdavanje dozvole (izabranom lekaru ili lekarskim komisijama) i u kom roku ovi organi donose odluku.

3. re-evaluation of temporary incapacity for work of an employee whose incapacity was assessed by the designated physician.

The second-instance medical commission decides on appeals only against decisions of the first-instance medical commission made without a prior assessment by the designated physician.

The wording “if, without the permission of a professional medical body of the Republic Health Insurance Fund, the insured person leaves their place of residence or stay” is questionable for several reasons.

Given that this concerns one of the fundamental human rights (the right to freedom of movement), and that the exercise of this right is conditioned by the potential loss of compensation during sick leave, the question arises whether citizens’ rights may be restricted or conditioned when no applicable regulation prescribes the procedure for granting such permission. Furthermore, workers should have the right to an effective legal remedy if they consider that their freedom of movement has been restricted.

The absence of such a procedure results in uncertainty, as employees do not know to whom they should submit a request for permission (the designated physician or medical commissions), nor within what time frame these bodies must decide.

Na kraju, iz ove sporne odluke proizilazi da radnici u svakom pojedinačnom slučaju moraju da se obraćaju stručno-medicinskom organu za izdavanje dozvola. Postavlja se pitanje je da li je takva odredba u saglasnosti sa najvišim pravnim aktom Republike Srbije. Ukoliko je ratio legis izdavanja dozvole zaštita prava na zdravlje radnika, odnosno to da bi mogli napuštanjem prebivališta da ugroze svoje zdravlje i zdravlje drugih, potrebno je propišu upravo ovi kriterijumi za izdavanje dozvole.

Smatramo da je neretko sama promena prebivališta i okruženja mogu blagotvorno da utiču na zdravlje radnika i da je to uvek slučaj kada radnicima na bolovanju izabrani lekar nije prepisao terapiju strogog mirovanja ili ležanja ili kada radnici ne boluju od neke zarazne bolesti.

Iz svega navedenog proizilazi da je a priori tvrdnja da radnici ne smeju da napuštaju prebivalište za vreme privremene sprečenosti za rad bez dozvole stručno-medicinskih organa (pod pretnjom da će izgubiti pravo na naknadu zarade) potpuna fama jer nije jasno u kom postupku se traže dozvole, kome se zahtevi podnose i u rom roku se odluke po zahtevima donose. Kada je na ovakvo stanje doda i vesti da su podaci o ličnosti u softverskom rešenju dostupni graničnoj policiji, onda se s pravom može očekivati da radnici neće ni podnositi zahteve za izdavanje dozvola za napuštanje prebivališta.

Finally, this contested provision implies that employees must, in each individual case, address a professional medical body for issuance of permission. This raises the question of whether such a provision is in compliance with the highest legal act of the Republic of Serbia. If the ratio legis issuing such permission is the protection of the employee's health, i.e. preventing them from endangering their own health or the health of others by leaving their place of residence, then these criteria should be explicitly prescribed.

We consider that, in many cases, a change of residence or environment may have a beneficial effect on the worker's health, especially when the selected physician has not prescribed strict rest or bed rest, or when the employee is not suffering from a contagious disease.

From all of the above, it follows that the a priori claim that worker may not leave their place of residence during temporary incapacity for work without permission from professional medical bodies (under threat of losing salary compensation) is essentially a fake news, since it is unclear in which procedure permission is requested, to whom requests are submitted, and within what timeframe decisions are made. When this situation is combined with new that personal data in software solution may be accessible to border police, it is reasonable to expect that employees will refrain from submitting such requests altogether.

Dodatno, činjenica da je radnik u obavezi da učestvuje u postupku obnavljanja ocenjivanja privremene sprečenosti za rad ne bi trebalo da bude razlog za zabranu napuštanja prebivališta za vreme bolovanja.

Pitanje gubitka prava na naknadu zarade za vreme bolovanja u slučaju kada izabrani lekar utvrdi da radnik ne postupa prema uputstvu za lečenje je takođe nejasno. Izabrani lekar je ovlašćen da savetuje radniku mirovanje i ležanje za vreme bolovanja. Nejasno je da li ova odredba ima za cilj da unapred spreči radnike da podnose zahteve za napuštanje mesta prebivališta. Da li se podrazumeva da radnici nisu postupali u skladu terapijom ukoliko nisu tražili dozvolu za napuštanje i da li, ukoliko izabrani lekar i komisija (u postupku po zahtevu za obnavljanje ocene o privremenoj sprečenosti za rad) utvrde da je radnik napuštao mesto prebivališta, to automatski znači gubitak prava na naknadu zarade.

Nejasno je i na koji na način izabrani lekar postupa u ovom slučajevima da bi radnik izgubio pravo na naknadu zarade, odnosno da li je dužan da ne izda izveštaj o privremenoj sprečenosti za rad. U praksi u ovim slučajevima u praksi izabrani lekari e-mail-om šalju obaveštenja RFZO.

Additionally, the fact that an employee is obliged to participate in the process of re-evaluation of temporary incapacity for work should not serve as grounds for prohibiting them from leaving their place of residence during sick leave.

The issue of losing the right to compensation during sick leave in cases where the selected physician determines that the employee has not followed medical instructions is also unclear. The selected physician is authorized to advise rest or bed rest during sick leave. It is unclear whether this provision aims to pre-emptively discourage employees from requesting permission to leave their place of residence, implying that employees are deemed not to have followed therapy if they did not request permission, and that, if the designated physician and the commission (during reassessment proceedings) determine that the employee left their place of residence, this automatically results in the loss of compensation.

It is also unclear how the designated physician should act in such cases for the employee to lose the right to compensation, i.e. whether the physician is obliged to refuse to issue a report on temporary incapacity for work. In practice, in such cases, designated physicians send notifications to the RHIF by email.

Pitanje napuštanja prebivališta za vreme bolovanja ima ograničen domašaj u kontekstu utvrđivanja zloupotrebe bolovanja kao razloga za otkaz ugovora o radu.

Prema stavu sudske prakse, zloupotreba bolovanja, kao razlog za otkaz ugovora o radu, postoji:

1. kada se bolovanje koristi protivno razlozima zbog kojih je otvoreno;
2. kada se radnik na bolovanju ne pridržava ponašanja koje mu je propisano ili preporučeno od strane ordinirajućeg lekara i tako svojim postupanjem usporava ili odlaže ozdravljenje;
3. kada radnik svesno ugrožava svoje zdravstveno stanje sa namerom da izdejstvuje ili se produži već otvoreno bolovanje, ili
4. kad ponašanje radnika ukazuje da nije sposoban za rad.

Pitanje dokazivanja korišćenja bolovanja suprotno propisanoj terapiji ili svrsi zbog koje je odsustvo sa posla odobreno u kontekstu napuštanja prebivališta je kompleksno. U kontekstu zloupotrebe bolovanja, a u vezi sa ponašanjem radnika za vreme bolovanja, uobičajena je praksa poslodavci angažuju druge radnike ili detektive da prate ponašanje zaposlenih na bolovanju, a u cilju prikupljanja dokaza za pokretanje postupaka za ponovno ocenjivanje privremene sprečenosti za rad.

The mere act of leaving the place of residence during sick leave has a limited scope in the context of establishing abuse of sick leave as grounds for termination of employment.

According to case law, abuse of sick leave, as a ground for termination, exists:

1. when sick leave is used contrary to the reasons for which it was granted;
2. when the worker does not adhere to behaviour prescribed or recommended by the treating physician, thereby delaying or hindering recovery;
3. when the worker intentionally endangers their health in order to obtain or prolong sick leave; or
4. when the worker's behaviour indicates that they are not actually incapable of working.

The issue of proving of using sick leave contrary to prescribed therapy or its purpose, in the context of leaving the place of residence, is complex. In practice, employers often engage other workers or private investigators to monitor the behaviour of workers on sick leave in order to collect evidence for initiating reassessment procedures.

Takvo postupanje je dozvoljeno jer je u Zakonu o radu propisano da poslodavac može da propiše opštim aktom načine za prikupljanje pomenutih dokaza.

Sa druge strane, pitanje napuštanja prebivališta za vreme bolovanja u kontekstu zloupotrebe prava bi jedno moglo da bude relevantno ukoliko je izabrani lekar u obaveznu medicinsku dokumentaciju (zdravstveni karton radnika), u skladu sa relevantnim odredbama Zakona o zdravstvenoj dokumentaciji i evidencijama u oblasti zdravstva, u okviru nalaza i mišljenja uneo podatak o terapiji, odnosno da se radniku savetuje strogo mirovanje i ležanje.

U Presudi Vrhovnog suda se navodi „da je utvrđeno da je tužilac (radnik na bolovanju) za vreme odsustva sa rada zbog bolesti, prisustvovao sednici poslodavca. Međutim, tokom lečenja tužiocu je pored medikamenata preporučeno i mirovanje koje nije podrazumevalo samo ležanje, a u završnoj fazi lečenja, tužilac je određeno kraće vreme mogao da hoda i sedi, odnosno njegovo zdravstveno stanje bilo je bolje, što je konstatovano od strane lekara. S obzirom na navedeno, pravilna je ocena nižestepenih sudova da tužilac preduzetom radnjom nije zloupotrebio pravo na odsustvo zbog privremene sprečenosti za rad, budući da se u periodu odsustva zbog bolesti ponašao u skladu sa propisanom terapijom, pa nije bilo osnova za primenu otkaznog razloga.“

Such actions are permitted, as the Labour Law allows employers to regulate methods for collecting such evidence through general acts.

On the other hand, leaving the place of residence during sick leave could be relevant in assessing abuse of rights only if the chosen physician, in the mandatory medical documentation (the worker's health record), in accordance with the relevant provisions of the Law on Health Documentation and records in Fie, explicitly stated in the findings and opinion data on therapy, i.e. that strict rest and bed rest are required.

A Supreme Court judgment states that “it was established that the plaintiff (a worker on sick leave) attended a meeting of the employer during his absence due to illness. However, during treatment, in addition to medication, the plaintiff was recommended rest, which did not imply strict bed rest; in the final phase of treatment, the plaintiff was able to walk and sit for shorter periods, as confirmed by a physician. In view of the above, the lower courts correctly concluded that the plaintiff did not abuse the right to leave due to temporary incapacity for work, as he behaved in accordance with prescribed therapy during the period of illness, and therefore there were no grounds for termination.”

Ova presuda pokazuje da bi se udaljenje iz mesta prebivališta moglo smatrati zloupotrebom prava na bolovanje samo ukoliko se terapija sastoji u izričito mirovanju i ležanju.

IV Zaključak

Postoje dobri izgledi da je reč o fami u slučaju pomenute vesti jer pitanje napuštanja mesta prebivališta za vreme bolovanja nema nikakve veze sa podacima iz Softverskog rešenja. Najbolje bi bilo da Poverenik sprovede nadzor i da razveje sve sumnje i strahove građanstva.

Nadamo se da su rukovaoci softverskih rešenja kvalitetno uradili procene uticaja na zaštitu podataka o ličnosti i mere iz procena sprovedeli u praksi. Ovakvo postupanje bi nas umirilo jer su naši strahovi opravdani – reč je velikoj koncentraciji posebnih kategorija podataka o ličnosti na jednom mestu, automatskoj obradi podataka i preuzimanju podataka o ličnosti iz različitih sistema.

Odredbe Zakona o zdravstvenom osiguranju u vezi sa gubitkom naknade zarade za vreme bolovanja i posrednom zabranom napuštanja mesta prebivališta su nejasne.

This judgment indicates that leaving the place of residence could be considered an abuse only if the prescribed therapy explicitly requires strict rest and bed rest.

IV Conclusion

There are strong indications that the aforementioned report represents a fake news, as the issue of leaving the place of residence during sick leave has no connection with data from the Software solution. It would be advisable for the Commissioner to conduct supervision in order to dispel any doubts and public concern.

It is hoped that the controllers of the software solutions have properly conducted data protection impact assessments and implemented the corresponding measures in practice. Such actions would provide reassurance, given the justified concerns arising from the high concentration of special categories of personal data in one place, automated data processing, and data transfers between different systems.

The provisions of the Law on Health Insurance concerning the loss of wage compensation and direct ban to leave a place of residence during sick leave are unclear.

Potrebno da se u ovom zakonu propiše postupak izdavanja dozvola za napuštanje mesta prebivališta u kome će regulisati: kome se podnose zahtevi i na koji način, u kojim slučajevima, koji su kriterijumi za odlučivanje i delotvorni pravni lek (u slučaj da radnik ne dobije dozvolu).

Izvesno je i to da opšta zabrana napuštanja mesta prebivališta od strane radnika za vreme bolovanja jeste fama usled neopravdanog straha da samo napuštanje mesta prebivališta, bez obzira na vrstu terapije, može da predstavlja zloupotrebu prava na bolovanje. Ova fama je još više dobila na značaju zbog straha građana da im faktički može biti uskraćen prelazak državne granice usled mogućnosti da granična policija ima pristup podacima o ličnosti iz Softverskog rešenja.

Istina je zabrana napuštanja mesta za prebivališta za vreme bolovanja ima ograničen domašaj u kontekstu otkaza ugovora o radu i da se podatak o terapiji radnika ne sadrži u softverskom rešenju.

It is necessary for this law to prescribe a procedure for granting permission to leave one's place of residence, regulating: to whom requests are submitted and in what manner; in which cases such requests may be made; the criteria for decision-making; and an effective legal remedy (in cases where the employee is denied permission).

It is also evident that a general prohibition on leaving the place of residence during sick leave is a fame, stemming from unfounded fears that any departure-regardless of the prescribed therapy-constitutes abuse of sick leave. This fake news has been further reinforced by concerns that individuals could effectively be prevented from crossing the state border due to the alleged possibility of border police accessing personal data from the Software solution.

The reality is that any restriction on leaving the place of residence during sick leave has a limited scope in the context of termination of employment and that data on prescribed therapy are not contained in the software solution.

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