

- October 2008 -

MONTENEGRO: EMPLOYMENT

LABOR LAW

(Zakon o radu, "Službeni list CG" n. 49/08)

The new Montenegrin Labor Law resembles the Serbian Labor Law enacted in 2005. However, some important provisions are left out, such as those regulating the status of general managers who are not employed with the company in which they serve.

Anti-discrimination and anti-harassment provisions In accordance with the EU directives, the new Labor Law prohibits discrimination on grounds of personal characteristics (such as gender, race, pregnancy, etc.). Furthermore, the new Labor Law also explicitly prohibits mobbing.

Mandatory content of employment agreements One of the novelties is the requirement that the various elements of an employee's total remuneration must be separately specified in the employment agreement.

Employment for defined period of time The new Labor Law no longer imposes the mandatory maximum duration of employment entered into for a defined period of time..

Status of general managers The law only regulates the status of general managers who are employed with a company in which they serve. It is regrettable that the new law fails to fill-in the gap that existed under the previous legislation concerning the status of general managers outside the employment context.

Change of employer The new Labor Law provides that in case of a "change of employer", the existing individual collective agreement and employment contracts remain in force for a period of one year. The term "change of employer" refers not only to a change of corporate status (e.g. merger or spin-off), but also to "change of majority ownership". It is unfortunate that the law treats a simple change of control as change of employer. In Serbia, where the employment legislation contains similar provision, the competent authorities have already rendered a non-binding opinion clarifying that the change of ownership is regarded as change of employer only in the context of privatization.

Redundancy The new Labor Law relaxes the requirements for preparation of a redundancy program.

Prohibition of competition The new Labor Law specifies the categories of employees onto which a non-compete obligation may be imposed. Further, it is provided that a post-termination restriction is enforceable only against the compensation to be paid to the employee. Such restriction cannot exceed two years following the termination of employment.

Termination of employment A new ground for dismissal is introduced: breach of work discipline. The new Labor Law also specifies the obligation of the employer to issue to the employee a written notification stating the grounds for termination and allow no less than 5 working days for the employee's response.

Service agreement The new Labor Law prescribes that service agreements may be concluded only for the jobs which are outside the employer's business activities. The law also prescribes mandatory content of such agreements.

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