Federation of Bosnia and Herzegovina: New Labour Act

AUGUST 2015

After over 15 years, the Parliament of the Federation of Bosnia and Herzegovina adopted a new Labour Act, which came into force on 20 August 2015. Overall, the new Labour Act keeps a number of provisions of the previous labour act and does not represent a radical reform of employer-employee relations. A number of changes, though, deserve special attention.

Fixed-term employment

The maximum duration of fixed-term employment agreement is extended from two to three years (with the exception of director's employment agreement, which may last for as long as the director holds the office). The fixed-terms employment regime remains liberal, since its conclusion is not conditioned by specific circumstances.

Employment status of directors and members of management board

The new Labour Act fills the gap concerning employment status of directors (general managers). The previous legislation was silent on whether director can be engaged outside employment relationship (this is possible in most of the jurisdictions in the region, including in the other Bosnian entity, Republika Srpska). In practice, the labour inspectorate maintained that director must be employed with the company it represents. Majority of companies therefore employed their directors, who were thus entitled to all statutory guarantees applicable to employees on non-managerial posts. The new Labour Act provides that a single director and the members of the management may be ether employed or hired via management agreement which does not constitute employment relationship.

Mandatory provisions concerning working time, breaks and vacation, employment termination and salary (e.g. minimum salary, equal salary for equal work principle) do not apply to directors and members of the management board, even when they are employed. Management agreement still offers greater flexibility compared to employment agreement. For example, there isno requirement to stipulate remuneration.

Social insurance registration

The law introduces the obligation of employer to deliver to a newly hired employee evidence that the employee is registered for mandatory social insurance, within 15 days from the commencement of work.

Working time

The maximum weekly duration of overtime work is decreased from 10 to eight hours.

Employers are obliged to ensure that employees working night shifts undergo health checks at least once in two years. There is also a new obligation on employers to keep records on employees, including daily records on employees' attendance and working time. A by-law containing detailed directions for keeping these records is expected to be issued by the Ministry of Labour.

Annual vacation

The minimum duration of annual vacation is increased from 18 to 20 working days. Employees who are entering into employment for the first time, as well as those who have a gap between two employments of over 15 days, are entitled to full annual vacation only after six months of work in the respective calendar year.

Employers are free to schedule annual vacation according to the needs of the business, with the obligation to consult the employees or their representatives (in case there is a trade union or a workers' council within the company) beforehand. Employees should be informed in writing of their annual vacation schedule at least seven days before the commencement of vacation.

Remote work

Although the previous labour act imposed no restrictions on work outside employer's premises (home-based, or work from another location of the employee), the new Labour Act explicitly recognises this type of work and prescribes mandatory elements of employment agreement for remote work. Those elemnts, *inter alia*, include the manner of supervision and compensation for the use of work tools belonging to the employee.

Salary

The new Labour Act adds performance-based element of salary into the mandatory salary structure

(in addition to so-called base-line salary, payments for overtime, work on public holiday or night shift, and payment for each additional year of past employment). This is a variable salary element, to be paid only if the criteria determined in an employer's general enactment or in the relevant employment agreement are met.

Termination of employment

Redundancy

In case of redundancy, consultations with the workers' council (or, in the absence of a workers' council, the trade union representing at least 10% employees) are mandatory if the employer having a total of more than *30 employees* intends to terminate *at least five employees* within a three-month period. Under the previous legislation, consultations were mandatory for employers with over 15 employees, planning to terminate over 10% of their work force, but not less than five employees, within a three-month period.

While the formula for the calculation of mandatory severance payment in case of redundancy remains the same, the new law introduces a cap. Minimum severance is now equal to the lower of: (i) one third of the employee's average salary in the three-month period preceding termination, multiplied with the total number of years of employment of the terminated employee and (ii) six average salaries of the employee in the three-month period preceding the termination. Entitlement to severance payment remains conditional upon the employee having spent at least two years with the employer under an indefinite-term employment agreement.

Statute of limitations for termination for breach of work duty

The subjective statute of limitations for terminating employee on grounds of violation of work duty is extended from 15 days to 60 days from the day the employer becomes aware of the relevant facts. The Labour Act introduces a one-year objective statute of limitations, counted from the day of the occurrence of the relevant facts warranting termination.

Termination notice

While the minimum termination notice remains unchanged (seven days in case of termination by the employee, and 14 days in case of termination by the employer, with no notice required in case of severe breach by either party), the Labour Act limits the maximum duration of termination notice to one month in case of termination by the employee, and three months in case of termination by the employer. This means that internal enactments/employment agreements cannot stipulate longer

notice period.

Protected groups

The Labour Act introduces absolute protection from termination of employees during pregnancy, maternity leave, as well as during the part-time work benefit provided by the Labour Act (employee is entitled to work part-time until the child reaches the age of one or two, depending on the number of children, or until the child requiring special medical care reaches the age of three), except where termination is a consequence of the expiry of a fixed-term employment. On the other hand, the Labour Act loosens up protection from termination during temporary inability to work due to injury suffered at work or occupational disease, by allowing termination in case of severe violation of work duties.

Claims against the employer

Before initiating court proceedings against the employer for a violation of a right stemming from employment, the affected employee must request from the employer to rectify the violation. The employee may submit such request to the employer within 30 days from the date of the delivery of the relevant decision violating his or her right or from the date the employee otherwise becomes aware of the violation. If the employer fails to cure the breach within 30 days from the receipt of the employee's request, the employee may initiate court proceedings within further 90 days. Request to cure the violation is not necessary when the employee's claim is for compensation of damage or for other payment.

Work Rules

The obligation to enact Work Rules (*Pravilnik o radu*) now exists only for employers with over 30 employees. Under the previous labour act, Work Rules were obligatory for employers with over 15 employees. The so-called systematisation of work posts (definition and description of each work post, with information on the professional requirements for, and the number of employees assigned to, each work) does not have to be within a separate enactment but can now be made part of the Work Rules.

Trade unions and collective agreements

Only representative trade unions have the capacity to conclude collective agreements. Representativeness of a trade union is determined by the employer's resolution, which has to be

enacted within 15 days from the receipt of a trade union's request to that effect. In order for a trade union to be representative, it must have at least 20% of all employees as its members. If no trade union organized within the employer's organization fulfils this requirement, the trade union with most members shall be deemed representative.

While according to the previous legislation collective agreements could be concluded for either definite or indefinite period, the new Labour Act prescribes that collective agreements may be concluded for a maximum period of three years.

Harmonisation with the new Labour Act

Employers are obliged to harmonise their Work Rules with the new Labour Act until 20 February 2016.

Any employment agreements that are not in accordance with the new Labour Act have to be aligned with the new legislation until 20 November 2015 or within three months from the day of the adoption of harmonized Work Rules (if the employer has Work Rules). However, if the employment agreement provides for more benefits to the employee than the new Labour Act, the specific benefit survives. The employee who refuses to enter into an amendment of his or her employment agreement for the purpose of harmonization with the new legislation may be terminated within 30 days from the day of delivery of the offer to conclude the relevant amendments.

Collective agreements that are not harmonised with the new Labour Act until 18 December 2015 shall cease to have effect.

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