

Republika Srpska: New Labour Act

FEBRUARY 2016

New Labour Act of Republika Srpska ("**Labour Act**") came into force on 20 January 2016.

Fixed-term employment

Fixed-term employment regime is liberalised to an extent. So far, fixed-term employment period could not exceed 24 months. With the new legislation, a person hired to replace a temporarily absent employee can have a fixed-term employment for as long as the absence requires, while project work can last until the project completion but no longer than 60 months. Unemployed persons who lack up to five years until retirement may enter into a fixed-term employment for the entire period until they meet the conditions for retirement.

Overtime work

Overtime cannot last more than four hours a day and 10 hours a week. The maximum number of overtime hours per employee in a calendar year is increased from 150 to 180 unless the applicable collective agreement allows up to 230 overtime hours.

Work Rules (*Pravilnik o radu*)

Employers with more than 15 employees are obliged to have either a collective bargaining agreement or unilaterally enacted Work Rules. Employer cannot enact Work Rules if it had previously rejected the trade union's initiative to commence collective bargaining negotiations. If negotiations were held, the Work Rules cannot be enacted before the lapse of 60 days from the collapse of negotiations. If employer initiated collective bargaining process, it can enact Work Rules only if the trade union rejected the initiative.

Rules on Work Post Systematisation (*Akt o sistematizaciji*)

Every employer with more than 15 employees hired for indefinite period must have Rules on Work Post Systematisation by 20 July 2016. These rules set out the organisational units and work posts, with job description and work requirements for each post.

Deployment to another location

Employee working on one location can be assigned to a different work at a different location

provided: (i) the distance between the new place of work is within 50 kilometres from the employee's existing place of work; (ii) adequate transportation is available; and (iii) the requirements of the new work post at the new location correspond to the employee's qualifications and work experience. If the employee refuses transfer to a new location, the employment may terminate his/her employment.

Secondment

Employee can be temporarily seconded to work for another employer if the conditions applicable to deployment to a different location are met and if the following additional conditions exist: (i) if the existing employer does not need employee's services, or (ii) if the existing employer and the new employer have a business cooperation agreement or an agreement on lease of business premises. The secondment can last for a maximum period of *one year* and the employment agreement with the new employer cannot be less favorable to the employee than his/her existing contract. After the secondment period expires, the employee is entitled to return to work for the initial employer.

Salary increase

Special compensation for past employment service (number of years spent in employment) is 0.3% of the basic salary per each year of service. The General Collective Agreement, which applies by 20 April 2016, is more generous as it provides for compensation equal to 0.5% of the basic salary per year.

Annual vacation

The minimum duration of annual vacation is increased from 18 to 20 working days. First-time employees and those who have been unemployed for more than 30 days in between two jobs are entitled to full annual vacation after six months of work for the first-time or, as the case may be, new employer. The employee is entitled to consume the entire vacation entitlement at once. Employers are free to schedule annual vacation according to the needs of the business, with the obligation to inform the employees in writing of their vacation schedule by 30 June each year.

Paid leave

New grounds for paid leave are introduced. Employee is entitled to 50% of his/her salary while unable to work due to *force majeure* or machine breakdown. Also, employee is entitled to 50% of his/her average salary in the preceding three-month period while on compulsory holiday due to temporary reduction of work volume or economic/technological changes.

Termination of employment

Consensual termination

Signatures on consensual termination agreement must be certified at the municipality.

Breach of work duty or discipline

The Labour Act abolishes disciplinary proceedings. Before termination for breach of work duty or discipline, employer is now obliged to deliver to employee a written notice stating the grounds for termination and the relevant facts and evidence and to wait for eight days for the employee's response.

The following measures can be taken against employee in cases of minor violations or in the presence of mitigating circumstances: (i) written termination warning, threatening with termination if a breach reoccurs within one year; or (ii) fine in the amount of up to 20% of the employee's monthly basic salary, deductible over the period of up to three months.

Underperformance

When terminating employee for underperformance, employer must first provide employee in writing with adequate instructions on how to improve. Employer is entitled to proceed with termination only if the employee continues to underperform upon the expiry of a reasonable cure period.

Statute of limitations

Employment cannot be terminated for breach or underperformance if more than *three months* have passed since the employer became aware of the employee's breach or underperformance, or if more than *six months* have passed from the occurrence of circumstances or events constituting the breach or underperformance.

Severance payment and notice period

Termination on the basis of redundancy and underperformance is subject to a 30-day notice and a mandatory severance payment. Statutory minimum severance is equal to the lower of: (i) one third of the employee's average salary in the three-month period preceding the termination, multiplied with the number of years spent with the employer 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.

Protected groups

The Labour Act extends the protection to employees during pregnancy, maternity leave, childcare leave. Employees in these circumstances were so far protected only from redundancy termination. They are now shielded also from termination due to underperformance or due to refusal to sign an annex to employment agreement. Trade union activists cannot be terminated without the trade union's consent while they are in office and for a period of six months thereafter, unless the trade union or the workers' council provides consent for termination.

New mass redundancy thresholds

Employer is obliged to prepare a redundancy programme in cooperation with the National Employment Service and the trade union if it plans to terminate, within a 90-day period: (i) at least 10 of its indefinite-term employees, provided it employs more than 30 and less than 100 indefinite-term employees; (ii) at least 10% of its indefinite-term employees, provided it employs between 100 and 300 indefinite-term employees; or (iii) at least 30 of its indefinite-term employees, provided it employs over 300 indefinite-term employees. Redundancy programme is also required when the employer plans to terminate at least 30 indefinite-term employees within a 90-day period, regardless of the total number of employees at the employer.

Unlawful termination

Under the earlier legislation, courts were allowed to reinstate an unlawfully dismissed employee even where the ground for dismissal was justified but the dismissal was found to be unlawful for a procedural error of the employer. According to the new Labour Act, courts will not be able to order reinstatement where the ground for termination is found to have merits but the dismissal is declared unlawful on procedural grounds. In that case, the employee is entitled to compensation of damages in the amount of up to six salaries paid to him/her in the month prior to the dismissal. If an employee successfully challenges the legal ground for termination but does not request reinstatement to work, the court may order the employer to pay damages in the amount of up to 12 employee's salaries, depending on the employee's years of service, age and the number of family members on support.

Claims against the employer

The statute of limitation for claims against the employer is six months from the day when the employee became aware of violation.

Change of control and change of status -

Statutory term "change of employer" encompasses status changes, such as mergers and spin-offs, and change of control. In case of "change of employer", the Labour Act requires that the predecessor

employer and the successor employer jointly notify the representative trade union in the company at least 15 days prior to the change on the following: (i) scheduled date of the change, (ii) reasons for the change and (iii) legal, economic and social consequences of the change and the measures for their amelioration. The law further provides that the collective agreement or, as the case may be, the Work Rules of the company must continue to apply for at least one year following the change, unless the collective agreement expires earlier on its own terms. Finally, where change of status results in two different entities, the predecessor employer is obliged to notify the employees in writing and in advance of the resulting transfer of their employment agreements on the new entity (successor employer). If employee disagrees with the transfer or fails to respond to the notification within five working days, the transferring employer is entitled to terminate the dissenting employee.

Collective agreements

The period of validity of collective agreements is limited to three years, with the possibility of extension. When terminated, a collective agreement continues to apply for a period of 60 days following the date of termination notice, unless the parties conclude a new collective agreement in the meantime.

The Government can now extend the application of industry-wide collective agreements to the companies which are not members of the employers' union in that industry only if the collective agreement is already binding on the employers employing more than 30% of total work force in the relevant industry.

The General Collective Agreement and the industry-wide collective agreements which were valid on 20 January 2016 will cease to have effect on 20 April 2016 by operation of law.

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