Serbia: Changes to the Labour Law

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Following the turbulent debate inside and outside the Serbian Parliament, the amendments to the Labour Law were adopted on 18 July 2014, and come into force on 29 July 2014. The amendments, although numerous and some of them significant, do not modify the fundamentals of the employer – employee relationship.

Those amendments which surpass mere refinement and clarification of the existing provisions can be divided into several categories. The first group consists of the amendments which make engagement of work force more flexible and simplify staff transfers. It is regrettable that the concept of staff leasing remains unregulated, despite the fact that it has gained ground in practice.

The second group of amendments modernises the provisions on annual leave and paid leave.

The third group of amendments is related to salary and other mandatory payments.

The fourth group of amendments relates to dismissal other sanctions in cases of violation of work duty or discipline. The dismissal procedure is modestly simplified compared to earlier provisions.

The fifth group of amendments introduces additional rights for pregnant women and breastfeeding mothers.

At the end of this text, we shall also refer to some other important amendments, which do not belong to any of the mentioned categories.

Flexible employment

Fixed-term employment

Fixed-term employment is significantly liberalized. Maximum duration of fixed-term employment agreement is extended from 12 months to 24 months, while in specific cases fixed-term employment can last even longer. For example, fixed-term employment with a newly established employer can be concluded for up to 36 months. Newly established employer is an entity which was established not more than one year prior to the commencement date of the employment relationship in issue. Project work can last until the project completion, no matter how long the project is foreseen to last. Finally, unemployed persons who lack up to five years until mandatory retirement may enter into a fixed-term employment contract for the entire period.

Transfer to another work post and assignment to another employer

The amendments allow transfer of employee to another suitable work post within the same employer in case this is necessary in order to perform certain work without delay. There is no need to conclude an amendment to the employment agreement in this case. Such transfer can last up to 45 working days in a 12-month period. During the transfer period, the employee retains his/her basic salary applicable to the old post, if such salary is higher than the salary applicable to the new work post.

Employer may also assign an employee to work for another employer if the need for the employee's work has temporarily ceased, or if this is part of an arrangement for lease of business premises or another form of business cooperation between the two undertakings. Such transfer may last up to one year without the employee's consent and longer subject to the consent. The amendments abolish the requirement that the new employment agreement be on terms no less favorable than the existing employment agreement.

Remote work

The term "remote work" has been introduced. This is, however, not a novel concept since this type of employment was possible even before the amendments. The amendments merely abolish the employer's obligation to register each employment agreement providing for remote work with the local authorities.

Annual leave and paid leave

Abolition of the mandatory "carry forward" of holiday accrued with a previous employer is a significant novelty.

Prior to the amendments, in the event of employment termination, the employer was obliged to issue to the employee a certificate stating the number of accrued but unspent annual leave days. Based on such certificate, the employee was able to use the unspent days of annual leave at his/her new employment. In addition, a first-time employee, as well as a person who has had a pause between two employments of more than 30 working days, became entitled to full annual leave in the first year

of his/her first/new employment already after six months of continuous work. If the employee worked less than six continuous months in the relevant year, he/she acquired one twelfth of his/her annual leave entitlement for each month of the work, and could not use any annual leave before the expiry of the six month-period of continuous work.

Pursuant to the amendments, employees will no longer be entitled to full annual leave after only six months of work in a specific calendar year, but will be entitled to one twelfth of annual leave for each month of work in the year in which the employment relationship is established or, as the case may be, terminated. In case of new employment, the employee is entitled to use annual leave after one month of continuous work for the new employer, but cannot use the unspent annual leave earned with the previous employer. In case of employment termination, the employee is entitled to a compensation for unused annual leave accrued at the terminating employer. The amount of compensation shall be calculated based on the employee's average salary in the three-month period preceding the termination (excluding rewards, bonuses and other earnings based on the employee's contribution to the employer's business success).

Annual leave can be used in more than two installments, subject to an agreement with the employer. Such agreements were common in practice even before the amendments, despite the old statutory provision according to which annual leave could have been used in maximum two installments. The minimum duration of the first holiday installment is at least two continuous weeks, down from three weeks under the previous law. The remaining days of holiday entitlement must be used until 30 June of the following year.

The amendments reduce the minimum duration of paid leave in cases of wedding, childbirth (for fathers), and serious illness of an immediate family member, to a total of five working days within a calendar year, on all mentioned grounds taken together. Additional days can be obtained only in case of death of an immediate family member or voluntary blood donation.

Salary, compensation of salary and severance pay

The amendments leave intact a complicated system of salary calculation. Salary still includes several categories: basic salary, performance-based part of salary and salary increment. In addition, employer is obliged to pay meal allowance, the costs of public transportation to and from work and holiday allowance. These mandatory payments must be accounted for separately from other salary components, although in essence all these payments represent payroll cost to the employer. The amendments now make it clear that meal allowance and commuting costs are mandatory only if the employer has not provided meals during work-time and transport to and from work, respectively.

For the purpose of calculating the so-called salary increase based on past years of employment (in an amount equal to no less than 0.4% of the basic salary for each full employment year), only the years of employment with the current employer are to be taken into account, and not the years spent with

any of the previous employers. This is a reasonable amendment, although it would have been even more reasonable if the obligation to pay increased salary for past employment had been entirely abolished. The length of past employment does not necessarily transform into additional experience that increases the value of the employee's work, and it should be up to the employer to assess to what extent the passage of time contributes to better work results.

The amendments abolish mandatory salary increase for work in shifts. This also seems reasonable because shift work does not necessarily involve disadvantageous work regime. Mandatory salary increase for night shift work remains intact.

Retirement severance payment has been reduced from three to two average salaries in Serbia, in accordance with the latest available statistical data.

Severance payment in case of redundancy is significantly reduced. The amendments provide that severance payment cannot be lower than the sum of one third of the employee's salary for each full year of past employment with the terminating employer. Prior to this change, a laid-off employee was entitled to a severance pay based on the total duration of his/her past employment, including the years spent working for other employers. Moreover, before the amendments, laid-off employee was entitled to severance pay for the total number of years of past employment even if he/she had already been made redundant and received severance on that basis.

The base for salary compensation in case of, *inter alia*, holiday is changed. From now on, employee's average salary in the previous 12 months shall be used as a benchmark. Previously, the reference period for calculation of the average salary was three months, which in practice often led to senior employees taking annual leave immediately after the receipt of bonus.

Minimum wage must be set by each 15 September. Employer paying a minimum wage to any of its employee must provide a justification to that effect in its general enactment or in the employment agreement. In case the employer keeps paying minimum salary for more than six months, it is obliged to inform the representative trade union of reasons for the continuation of minimum wage payments.

Termination of employment and other sanctions

The amendments introduce many novelties when it comes to termination of employment and other sanctions for violation of work duties and work discipline

Under the previous version of the law, it was entirely up to the employer to precisely define the catalogue of violations of work duties and discipline which could have served as grounds for dismissal. Employer was unable to dismiss an employee for breach unless a specific violation was explicitly prescribed in the employment agreement or the employer's Work Rules as a ground warranting dismissal. The amendments simplify the matters for "forgetful" employers, by envisaging a

catalogue of basic violations of work duty and work discipline which can trigger dismissal. Employers may expand this catalogue and thus the grounds for dismissal, by stipulating for additional breaches in the Work Rules and/or individual employment agreements.

The previous legislation also made it difficult for employers to prove certain violations of work discipline because there was no mechanism to compel a recalcitrant employee to undergo an examination. Pursuant to the amendments, employee's refusal to undergo appropriate medical examination at the employer's expense, aimed at verifying whether sick leave was abused or whether the employee was under the influence of alcohol or narcotics at work, is a stand-alone breach of work discipline warranting dismissal.

Besides warning and dismissal, the amendments introduce two new sanctions for violation of work duty or discipline and for underperformance:

- Temporary unpaid suspension from work, which may last from one to 15 working days;
- Monetary penalty in the amount of up to 20% of the employee's basic salary in the month in which this sanction is imposed, which may apply for a period of up to three months.

In case an employee fails to achieve work results or lacks necessary knowledge and ability required for his/her job, the employer may impose one of the above measures or terminate the employment relationship, but only if the employee does not improve within a reasonable period and in the manner specified in the employer's written instruction.

Suspension from work of an employee against whom criminal proceedings have been initiated for a crime alleged to have been committed at work or in relation to work is no longer limited to three months but may last until the final judgment is rendered. Having in mind the average length of criminal proceeding in Serbia, the old rule practically made it impossible for employers to suspend the indicted employee for the entire period until the final judgment was rendered.

Delivery of warning on the existence of grounds for dismissal remains obligatory only in cases where termination results from the violation of work duty or discipline, and the employee must be given at least eight days (as opposed to five under the old rule) to respond to the warning. The duty of employer to deliver the warning to the trade union is abolished. Employee may procure and deliver the opinion of the trade union to the employer along with his/her response to the warning, in which case the employer is required to consider but is not obliged to follow the opinion.

The period during which the laid-off employee enjoys the right of first refusal with respect to the work post from which he/she was dismissed, is reduced from six months to three months from the date of termination.

In addition, the statute of limitations for terminating employee on grounds of violation of work duty, breach of discipline or underperformance is extended from three to six months from the day the employer becomes aware of the relevant facts (subjective statute of limitations), and from six months to one year from the day of the occurrence of the relevant facts (objective statute of limitations).

Termination notice period owed by the employer to the employee in case of termination for underperformance cannot be shorter that eight or longer than 30 days. Previously, such notice period lasted between one month and three months, depending on the employee's total years of past employment.

Time period for initiation of court proceedings against the employer for violation of employment-related rights, including unlawful dismissal, is reduced from 90 to 60 days from the date of the delivery of the relevant termination decision or, as the case may be, from the date the employee becomes aware of a violation of his/her right.

Under the old law, 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 overstep by the employer. As a result of the amendments, the court shall not be able to order reinstatement where the substantive ground for termination is found to have merits but the dismissal is declared unlawful for procedural breach. In that case, the employee shall be entitled to compensation of damages in the amount of up to six salaries paid in the month prior to the dismissal.

Employee may terminate employment agreement subject to a notice period of 15 days. This statutory notice period may be extended to up to 30 days. Before the amendments, there was no upper limit to the employee's notice period.

Protection of motherhood

The amendments do not affect the provisions affording protection from dismissal during pregnancy, maternity leave, childcare leave or special childcare leave. Employers remain prohibited from terminating employees belonging to any of these categories, even for violation of working duty, violation of discipline or incompetence.

The amendments bring about additional protection to mothers. Prohibition of work assignment which is, according to the findings of a competent medical institution, harmful for the health of a pregnant woman and the child, has been expanded to breastfeeding employees. If the employer is unable to assign such employee to an adequate work position, it is obliged to allow her to take paid leave. The

law does not specify the maximum period during which this protection of breastfeeding mothers may last, nor does it specify the minimum amount of salary compensation payable during the mandatory paid leave.

According to the amendments, a female employee may not work overtime or at night during her pregnancy and while she is breastfeeding, if the relevant medical institution deems that such work would be harmful to her health and the health of the child. Earlier, this protection was limited to the period of pregnancy.

Finally, a pregnant employee is entitled to paid leave during the day in order to undergo medical examination related to her pregnancy, as required by her physician. Employee using this right is obliged to timely inform her employer of such absence.

Other important changes

Extended application of collective agreements

To the disappointment of many employers, the Government remains permitted to extend the application of industry-wide collective agreements to the companies which are not members of the employers' union that signed the industrial agreement. It is of little comfort that the conditions for such administrative extension of industrial collective agreements to non-signatories have been made somewhat stricter. Namely, the Government may extend the application of a collective agreement to non-signatories provided that such collective agreement is already binding on the employers employing more than 50% of total work force engaged in the relevant industry (up from 30%).

Administrative duties

The amendments envisage that the employer may authorise not only its employees to decide on rights and duties arising from employment, but also other persons, such as external lawyers. Previous rule according to which the authorisation could have been given only to an employee was unreasonably narrow and it often led to a deadlock in situations where the rights and duties of a single director were at stake.

The Rules on Systematisation of Work Posts are now obligatory only for employers with more than ten employees (previously, the obligation was imposed on employers having more than five employees). The new rule, difficult to comprehend, also states that the Rules on Systematisation of Work Posts can set maximum two alternative and sequential levels of educational degree as a condition for work on a specific work post.

Delivery of salary pay-slips can be done electronically. Electronic delivery is also permitted with respect to decision on annual leave, although the employee may demand a hard copy. It remains unclear whether the competent authorities will consider electronic delivery of these documents to be

lawful without usage of qualified electronic signature of the employer. The decision on termination of employment must still be delivered personally (or published on the employer's bulletin board if personal delivery has failed).

Salary pay-slip, the contents of which is to be regulated by a decree, will from now on represent a directly enforceable title, thus enabling the employees to initiate collection proceedings against the employer without having to litigate first.

Succession of employers

Due to the inarticulate legal definition of the notion of "change of employer" in the Labour Law, it has been so far unclear whether direct or indirect change of ownership over the employer's capital requires notification of employees and has as its effect mandatory continuation of the collective agreement or the employer's Work Rules for at least one year following the change.

The amendments specify that a change of ownership over the employer does not represent "change of employer", so the above mentioned duty of notification and mandatory continuation of collective agreement or the Work Rules apply only in cases involving genuine change of status (e.g. merger or spin-off).

Deadline for harmonisation with the amendments

Employers are obliged to harmonize their employment agreements and the Rules on Systematization of Work Posts with the amendments to the Labour Law within 60 days from the entry into force of the amendments, i.e. until 27 September 2014. The deadline for harmonisation of the Work Rules and the collective agreements with the amendments is six months, i.e. until 29 January 2015.

Misdemeanor sanctions

Maximum amount of monetary penalty envisaged for misdemeanors foreseen by the Labour Law has been increased from RSD 1,000,000.00 to RSD 2,000,000.00 (approx. EUR 17,400).

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Izmene Zakona o radu

U burnoj atmosferi u i van Skupštine, Zakon o izmenama i dopunama Zakona o radu usvojen je 18. jula 2014. godine, i stupa na snagu 29. jula 2014. godine. Iako su izmene obimne a neke od njih i značajne, usvojenim zakonom se suštinski ne menja osnovna konstelacija odnosa poslodavac – zaposleni.

Izmena koje idu dalje od pukog preciziranja postojećih odredbi mogu se podeliti u nekoliko kategorija. Prvu grupu izmena čine one koje omogućavaju fleksibilnije angažovanje radne snage i pojednostavljeno raspoređivanje zaposlenih na druge poslove. Za žaljenje je što je institut iznajmljivanja radne snage (*staff leasing*-a) ostao neregulisan, iako već duže vreme živi u praksi.

Druga grupa izmena modernizuje rešenja koja se odnose na godišnji odmor i plaćeno odsustvo.

Treću grupu izmena čine one koje se odnose na zaradu i druga primanja iz radnog odnosa.

Četvrtu grupu izmena čine one koje se tiču otkaza ugovora o radu i drugih sankcija zbog povrede radne obaveze ili radne discipline. U ovom domenu, poslodavcima se donekle olakšava postupak otkaza.

Petu grupu izmena čine one kojima se trudnicama i dojiljama daju dodatna prava.

Na kraju teksta osvrćemo se i na ostale važnije izmene koje se ne mogu svrstati ni u jednu od pomenutih kategorija.

Fleksibilno zapošljavanje

Rad na odre?eno vreme

Oblast rada na određeno vreme znatno je liberalizovana. Maksimalno trajanje rada na određeno vreme produženo je sa dosadašnjih 12 meseci na 24 meseca, a u određenim slučajevima radni odnos na određeno vreme može da traje i duže od dve godine. Između ostalog, rad na određeno vreme kod novoosnovanog poslodavca može se ugovoriti na period do 36 meseci. Novosonovani poslodavac je društvo čiji upis u registar kod nadležnog organa u momentu zaključenja ugovora o radu nije stariji od jedne godine. Rad na projektu čije je trajanje unapred određeno može da traje najduže do završetka projekta, koliko god bilo predviđeno trajanje projekta. Konačno, nezaposleno lice kome do ispunjenja nekog od uslova za ostvarivanje prava na starosnu penziju nedostaje do pet godina može da zasnuje radni odnos na određeno vreme najduže do ispunjenja uslova za ostvarivanje prava na penziju.

Premeštaj zaposlenog na druge poslove i upu?ivanje kod drugog poslodavca

Izmene predviđaju mogućnost privremenog premeštanja zaposlenog na druge odgovarajuće poslove kod istog poslodavca bez obaveze zaključenja aneksa ugovora o radu, ako je to potrebno da bi se

određeni posao izvršio bez odlaganja. Premeštaj može da traje najduže 45 radnih dana u periodu od 12 meseci. Zaposleni zadržava osnovnu zaradu utvrđenu za posao sa koga se premešta, ako je to za njega povoljnije.

S druge strane, kod upućivanja zaposlenog na rad kod drugog poslodavca (do čega može doći ako je privremeno prestala potreba za radom zaposlenog, u okviru zakupa poslovnog prostora ili ugovora o poslovnoj saradnji između dva poslodavca), ukida se uslov da ugovorom o radu sa drugom poslodavcem budu utvrđena najmanje ista prava kao ona koja zaposleni ima kod poslodavca koji ga upućuje na rad. Rad kod drugog poslodavca po osnovu upućivanja može trajati najviše do godinu dana bez pristanka zaposlenog.

Rad na daljinu

Uveden je pojam rada na daljinu. Ovaj vid zapošljavanja bio je moguć i do sada, s tim što poslodavac više neće biti obavezan da ugovor o radu za obavljanje poslova van prostorija poslodavca (tj. za rad na daljinu ili rad od kuće) registruje kod nadležnog organa lokalne samouprave.

Godišnji odmor i druga odsustva

Značajnu novinu predstavlja ukidanje mogućnosti „prenošenja“ kod novog poslodavca godišnjeg odmora zarađenog a neiskorišćenog kod prethodnog poslodavca.

Do sada, poslodavac je bio dužan da zaposlenom u slučaju prestanka radnog odnosa izda potvrdu o broju (ne)iskorišćenih dana godišnjeg odmora. Na osnovu ove potvrde, zaposleni je neiskorišćen godišnji odmor mogao da koristi kod novog poslodavca. Takođe, osoba koja se prvi put zapošljava, kao i osoba koja je ima pauzu između dva zaposlenja od preko 30 radnih dana, sticala je pravo na godišnji odmor u punom trajanju pod uslovom da je u toj godini radila najmanje šest meseci neprekidno. Ako je radila manje od šest meseci neprekidno u datoj godini, zaposlena osoba je sticala pravo na dvanaestinu godišnjeg odmora za svaki mesec rada u toj kalendarskoj godini, s tim što je godišnji odmor mogla da koristi tek posle šest meseci neprekidnog rada.

Zaposleni više neće imati pravo na pun godišnji odmor posle samo šest meseci rada u određenoj kalendarskoj godini, već stiče pravo na dvanaestinu ukupnog godišnjeg odmora za svakih mesec dana rada u kalendarskoj godini u kojoj je zasnovao radni odnos, odnosno u kojoj mu prestaje radni odnos. U slučaju novog zaposlenja, zaposleni može početi da koristi godišnji odmor već nakon mesec dana neprekidnog rada kod novog poslodavca ali ne može kod novog poslodavca koristiti godišnji odmor stečen kod prethodnog poslodavca. U slučaju prestanka radnog odnosa, zaposleni ima pravo na isplatu naknade za neiskorišćen odmor kod poslodavca kod koga mu prestaje radni odnos. Iznos naknade obračunava se na osnovu prosečne zarade zaposlenog u prethodna tri meseca (ne računajući

nagrade, bonuse i druga primanja ostvarena po osnovu doprinosa zaposlenog poslovnom uspehu poslodavca), primenjene na broj zarađenih a neiskorišćenih dana godišnjeg odmora.

Izmene uvode mogućnost korišćenja godišnjeg odmora u više od dva dela ako se poslodavac i zaposleni tako sporazumeju. Ovo je i do sada bilo često sprovođeno u praksi, uprkos odredbi prema kojoj se godišnji odmor mogao koristiti najviše u dva dela. Poslodavac je pri tome dužan da zaposlenom omogući da u toku kalendarske godine prvi deo godišnjeg odmora koristi u trajanju od najmanje dve radne nedelje neprekidno (umesto dosadašnjeg minimuma od tri radne nedelje), dok zaposleni ostatak odmora, kao i do sada, može da iskoristi najkasnije do 30. juna naredne godine.

Izmenama se takođe skraćuje minimalno trajanje plaćenog odsustva u slučaju sklapanja braka, porođaja supruge, teže bolesti člana uže porodice na ukupno pet, umesto dosadašnjih sedam, radnih dana u toku kalendarske godine po svim nabrojanim osnovima. Ostaju dva dodatna osnova za plaćeno odsustvo (smrt člana uže porodice i dobrovoljno davanje krvi), za koja se mogu dobiti dodatni slobodni dani.

Zarada, naknada zarade i otpremnine

Ostaje komplikovan obračun zarada koji obuhvata nekoliko kategorija: osnovnu zaradu, deo zarade za radni učinak, uvećanu zaradu. Topli obrok, naknada za prevoz i regres za godišnji odmor ostaju obavezna davanja i moraju se iskazati odvojeno od ostalih elemenata zarade, iako su za poslodavca sva ta davanja u suštini trošak na ime zarada. Precizirano je da su naknade za topli obrok i prevoz obavezne samo ako poslodavac nije obezbedio ishranu zaposlenima tokom radnog vremena, odnosno prevoz do i sa radnog mesta.

Za potrebe obračuna uvećanja zarade po osnovu minulog rada (najmanje 0.4% osnovne zarade za svaku punu godinu ostvarenu u radnom odnosu), od sada se računaju samo pune godine rada ostvarene u radnom odnosu kod konkretnog poslodavca kod koga zaposleni radi, a ne i kod prethodnih poslodavaca. Ova izmena ima smisla, mada bi još više smisla imalo potpuno ukidanje kategorije „minulog rada“. Naime, puki broj godina rada ne preliva se automatski u dodatno iskustvo koje uvećava vrednost rada zaposlenog. U kojoj meri protek vremena doprinosi iskustvu a iskustvo boljim rezultatima rada treba ostaviti poslodavcu na ocenu.

Izmenama se ukida obavezno uvećanje zarade za rad u smenama, jer smenski rad nije obavezno i prekovremeni ili na drugi način nepovoljniji rad. Ostaje obavezno uvećanje zarade za rad noću.

Otpremnina kod odlaska u penziju smanjena je sa tri na dve prosečne zarade u Srbiji prema poslednjem objavljenom podatku u trenutku isplate otpremnine.

Pravo na otpremninu kod otkaza po osnovu viška zaposlenih značajno je umanjeno jer sada otpremnina ne može biti niža od zbira trećine zarade zaposlenog za svaku navršenu godinu rada u radnom odnosu kod poslodavca kod koga je dobijen otkaz, dok je ranije zaposleni imao pravo na otpremninu za ukupan broj navršenih godina u radnom odnosu - dakle, i za one godine koje je proveo radeći za nekog drugog poslodavca. Štaviše, ranije je zaposleni imao pravo na otpremninu za ukupan broj godina rada u radnom odnosu čak i ako je već jednom ili više puta bivao otpušten kao višak i ostvario otpremninu za sve dotadašnje godine u radnom odnosu.

Takođe, menja se osnovica za obračun naknade zarade za vreme odsustvovanja sa rada zbog, između ostalog, godišnjeg odmora. Nju sada čini prosečna zarada zaposlenog u prethodnih 12 meseci. Do sada je referentni period za obračun prosečne zarade iznosio tri meseca, što je u praksi, bar kada je reč o *senior* zaposlenima koji ostvaruju pravo na bonus, dovodilo do toga da se godišnjih odmor uzima neposredno nakon isplate godišnjih bonusa.

Minimalna cena rada za narednu godinu utvrđivaće se najkasnije do 15. septembra tekuće godine. Poslodavac razloge za isplatu minimalne zarade nekom zaposlenom utvrđuje opštim aktom ili ugovorom o radu, a ukoliko zaposlenom isplaćuje minimalnu zaradu duže od šest meseci dužan je da po isteku tog roka obavesti reprezentativni sindikat o razlozima za nastavak isplate minimalne zarade.

Otkaz ugovora o radu i druge sankcije

Izmene Zakona o radu donose dosta novina u vezi sa otkazom ugovora o radu i drugim sankcijama za povrede radno-pravnih obaveza.

Prema dosadašnjem rešenju, definisanje konkretnih povreda radih obaveza i radne discipline koje mogu biti razlog za otkaz bilo je u celosti prepušteno poslodavcu koji nije mogao da otpusti zaposlenog ukoliko konkretna povreda nije bila eksplicitno predviđena ugovorom o radu ili opštim aktom poslodavca. Izmenjen zakon u ovom pogledu olakšava situaciju „zaboravnom“ poslodavcu, predviđajući katalog osnovnih povreda radnih obaveza i radne discipline koje predstavljaju osnov za otkaz ugovora o radu. Opštim aktom i/ili ugovorom o radu poslodavac može proširiti ovaj katalog povreda, a time i mogućnost otkaza po ovom osnovu.

Ranije je u praksi poslodavcima bivalo teško da dokažu najčešća kršenja radne discipline jer nisu imali mehanizme da primoraju zaposlenog da se podvrgne pregledu. Nakon što izmene zakona stupe na snagu, odbijanje zaposlenog da se o trošku poslodavca podvrgne odgovarajućem pregledu u zdravstvenoj ustanovi radi utvrđivanja zloupotrebe prava na odsustvo zbog privremene sprečenosti za rad ili dolaska na rad pod dejstvom alkohola ili drugih opojnih sredstava (ili upotrebe istih u toku radnog vremena), predstavlja samo po sebi nepoštovanje radne discipline zbog kojeg se zaposlenom

može otkazati ugovor o radu.

Pored opomene i otkaza, izmenama zakona uvedene su dve nove sankcije za povredu radne obaveze ili discipline, kao i za neostvarivanje rezultata rada ili nestručnost:

- privremeno udaljenje sa rada bez naknade zarade, u trajanju od jednog do 15 radnih dana;
- novčana kazna u visini do 20% osnovne zarade zaposlenog u mesecu u kome je novčana kazna izrečena, u trajanju do tri meseca.

U slučaju da zaposleni ne ostvaruje rezultate rada ili nema potrebna znanja i sposobnosti za obavljanje poslova na kojima radi, poslodavac može da izrekne neku od gore pomenutih mera, ili otkaz, tek ukoliko zaposleni ne poboljša rad u primerenom roku na način naveden u pisanom uputstvu poslodavca o merama koje treba preduzeti.

Udaljenje sa rada zaposlenog protiv koga je započeto krivično gonjenje zbog krivičnog dela učinjenog na radu ili u vezi sa radom nije ograničeno na tri meseca kao do sada (što je, s obzirom na dugo trajanje krivičnog postupka, praktično onemogućavalo poslodavcima da udalje zaposlenog do donošenja pravnosnažne presude), već može trajati sve do pravnosnažnog okončanja krivičnog postupka.

Dostavljanje upozorenja o postojanju razloga za otkaz ugovora o radu ostaje obavezno samo u slučaju otkaza zbog povrede radne obaveze i nepoštovanja discipline, s tim što se zaposlenom mora ostaviti najmanje osam dana (umesto dosadašnjih pet radnih dana) da se izjasni na navode iz upozorenja. Takođe, ukida se obaveza dostavljanja upozorenja sindikatu. Zaposleni može uz svoje izjašnjenje da priloži i mišljenje sindikata čiji je član. Poslodavac je dužan da razmotri, ali ne i da usvoji, mišljenje sindikata.

Rok u kome poslodavac ne može da zaposli drugo lice na poslovima na kojima je otpustio zaposlenog po osnovu viška bez da prethodno ponudi zaposlenje otpuštenom, smanjuje se sa šest meseci na tri meseca od dana prestanka radnog odnosa.

Takođe, produžava se rok za otkaz zbog povrede radne obaveze, povrede discipline, neostvarivanja rezultata rada ili nestručnosti sa dosadašnjih 3 na 6 meseci od dana saznanja za činjenice koje su osnov za davanje otkaza (subjektivni rok), i sa dosadašnjih 6 meseci na godinu dana od dana nastupanja činjenice koja je osnov za davanje otkaza (objektivni rok).

Otkazni rok u slučaju otkaza od strane poslodavca kada zaposleni ne ostvaruje rezultate rada ili je utvrđeno da je nestručan za obavljanje poslova na kojima radi, ne može biti kraći od 8 niti duži od 30 dana. Do sada je ovaj otkazni rok iznosio od mesec dana do tri meseca, u zavisnosti od dužine staža

osiguranja zaposlenog.

Rok za pokretanje spora od strane zaposlenog protiv poslodavca zbog povrede prava iz radnog odnosa, uključujući nezakonit otkaz, skraćen je sa 90 na 60 dana od dana dostavljanja rešenja o otkazu, odnosno saznanja za drugu povredu prava.

Do sada je po zakonu postojala mogućnost da sud otkaz proglasi nezakonitim i zaposlenog vrati na rad i dodeli mu naknadu štete u visini izgubljene zarade i u onim slučajevima u kojima je osnov za otkaz bio opravdan ali je nezakonitost posledica nekog proceduralnog propusta poslodavca. Sada, ako sud nađe da postoji materijalni osnov za prestanak radnog odnosa, odbiće zahtev zaposlenog za vraćanje na rad i pored toga što je prekršena procedura prilikom otkaza. U tom slučaju, zaposleni ima pravo na naknadu štete u iznosu do šest zarada ostvarenih u mesecu koji je prethodio mesecu u kome je dobijen otkaz.

Zaposleni može poslodavcu otkazati ugovor o radu uz zakonski otkazni rok od 15 dana. Ovaj zakonski otkazni rok ugovorom se može produžiti na najviše 30 dana. Do sada nije postojao gornji limit dužine otkaznog roka.

Zaštita materinstva

Izmenama se ne dira u dosadašnju zaštitu od otkaza ugovora o radu za vreme trudnoće, porodiljskog odsustva, odsustva sa rada radi nege deteta i odsustva sa rada radi posebne nege deteta. Poslodavac ovim kategorijama zaposlenih i dalje nije u mogućnosti da otkaže ugovor o radu, pa ni u slučaju povrede radne obaveze, discipline ili nestručnosti.

Izmenama se predviđa veća zaštita materinstva u odnosu na dosadašnju. Zaštita od obavljanja poslova koi su, po nalazu nadležnog zdravstvenog organa, štetni za zdravlje trudnice i zdravlje deteta proširena je i na zaposlene koje doje dete. Ako poslodavac ovim kategorijama zaposlenih nije u stanju da obezbedi obavljanje odgovarajućih poslova u skladu sa medicinskim nalazom, obavezan je da uputi zaposlenu na plaćeno odsustvo. Zakon ne precizira maksimalni period tokom koga važi zaštita dojilja niti određuje minimalan iznos naknade zarade tokom obaveznog plaćenog odsustva po osnovu opisanom u ovom paragrafu.

Zaposlena sada tokom čitavog perioda trudnoće, kao i za vreme dok doji dete, ne može da radi prekovremeno i noću, ako bi takav rad bio štetan za njeno zdravlje i zdravlje deteta, na osnovu nalaza zdravstvenog organa. Prethodno je ovakva zaštita pokrivala samo trudnice.

Dodatno, zaposlena za vreme trudnoće ima pravo na plaćeno odsustvo sa rada u toku dana radi obavljanja zdravstvenih pregleda u vezi sa trudnoćom, određenih od strane izabranog lekara, o čemu

je dužna da blagovremeno obavesti poslodavca.

Ostale važnije izmene

Prošireno dejstvo kolektivnih ugovora

Loša vest za poslodavce je što ostaje mogućnost da Vlada svojim administrativnim aktom proširi dejstvo nekog granskog kolektivnog ugovora i na ona privredna društva koja nisu članovi udruženja poslodavaca koje je učesnik kolektivnog ugovora. Utešna vest je da su uslovi za prošireno dejstvo kolektivnog ugovora donekle pooštreni. Naime ovakvu odluku Vlada može da donese pod uslovom da kolektivni ugovor čije se dejstvo proširuje obavezuje poslodavce koji zapošljavaju više od 50% zaposlenih u određenoj grani, grupi, podgrupi ili delatnosti, umesto dosadašnjih 30%.

Administrativne obaveze

Izmenama je predviđeno da poslodavac ovlašćenje za odlučivanje o pravima i obavezama iz radnog odnosa može da prenese ne samo na lica zaposlena kod tog poslodavca, već i na druga lica, na primer advokate. Dosadašnji strog a ničim opravdan uslov da se ova ovlašćena mogu preneti samo na lica zaposlena kod poslodavca dovodio je do *deadlock*-a kada je poslodavac trebalo da rešava o pravima i obavezama direktora, u onim slučajevima gde postoji samo jedan direktor sa takvim ovlašćenjem.

Pravilnik o organizaciji i sistematizaciji poslova će od sada biti obavezan samo za poslodavce koji zapošljavaju preko deset zaposlenih (dok se do sada obaveza donošenja ovog akta odnosila na poslodavce sa preko pet zaposlenih). Poslodavci koji su obavezni da imaju pravilnik o organizaciji i sistematizaciji poslova kao uslov za rad na određenim poslovima (tj. određenom radnom mestu) mogu utvrditi najviše dva alternativna i to uzastopna stepena stručne spreme. Ostaje nejasno koji je racio ove izmenu.

Predviđena je mogućnost elektronskog dostavljanja obračuna zarade i naknade zarade, kao i rešenja o korišćenju godišnjeg odmora (osim ako zaposleni zahteva pisani otpravak ovog rešenja), ali ne i rešenja o otkazu koje se i dalje mora dostavljati lično (odnosno objavljivanjem na oglasnoj tabli poslodavca ako ne uspe lično dostavljanje). Ostaje nejasno da li će nadležni organi smatrati zakonitim elektronsko dostavljanje ovih dokumenata bez upotrebe kvalifikovanog elektronskog potpisa poslodavca.

Obračun zarade i naknade zarade koje je poslodavac dužan da isplati (čija sadržina će biti propisana podzakonskim aktom) predstavlja od sada izvršnu ispravu, pa će zaposleni na osnovu ovog obračuna moći da pokrene izvršni postupak protiv poslodavca.

Promena poslodavca

Zbog nemušte zakonske definicije pojma „promena poslodavca“, do sada je bilo nejasno da li promena direktnog ili indirektnog vlasništva nad kapitalom poslodavca-privrednog društva zahteva obaveštavanje zaposlenih i dovodi do obaveze da poslodavac nastavi da primenjuje kolektivni ugovor ili Pravilnik o radu najmanje godinu dana nakon promene.

Izmenama je precizirano da promena vlasništva nad poslodavcem ne predstavlja promenu poslodavca, te da gore navedene obaveze postoje samo u slučaju statusne promene (kao što je spajanje ili odvajanje).

Rokovi za uskla?ivanje sa izmenama

Poslodavci su dužni da usklade ugovore o radu i Pravilnik o organizaciji i sistematizaciji poslova sa izmenama Zakona o radu u roku do 60 dana od dana stupanja na snagu izmena, dakle do 27. septembra 2014. Rok za usklađivanje Pravilnika o radu, odnosno pojedinačnih kolektivnih ugovora je šest meseci od dana stupanja na snagu izmena, tj. do 29. januara 2015.

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