LABOUR

Amendments to the Labour Law in 2014 led to significant improvements of labour law regulations. At the time, more than 65% of recommendations from previous editions of the White Book were adopted and the labour legislation was significantly adjusted to the needs of the labour market. There is still, however, room for improvement both in respect of the Labour Law in general and separate laws governing this area.

Priority in further reform of the Labour Law should be given to the need to recognize and regulate more flexible forms of work, such as different forms of teleworking, staff leasing arrangements, and internship when it is not part of a mandatory educational program; as well as digitalization and simplifying the very formal manner of communication between the employer and the employee, the complex salary structure, and the calculation of compensation for wages. It is necessary to further simplify and expedite the procedure for the employment of foreigners and labour mobility in general; recognize business activities which, due to their specificities, come with limited options for employing persons with disabilities; adopt subordinate legislation which would enable efficient implementation of the Law on Dual Education in practice; and further improve the education system in general.

The continuation of reforms in the field of labour is a necessary prerequisite for creating a business environment in which the Serbian market will attract foreign investments and bolster the opening of new jobs. The HR Committee, by investing its knowledge and experience in the implementation of regulations, has strived to point out the priorities in the need for further improvement of this area.

LABOUR RELATED REGULATIONS 1.21

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Labour Law				
Most international companies have a system of salary calculation applied throughout the world. Forcing these companies to accept a completely different system just for Serbia creates an additional barrier to foreign investment and increases investment costs. The possibility of a free agreement between employees and employers on the structure of the salary and additional benefits, and the establishment of a salary system that will stimulate employees' work, is the basis for the functioning of the labour market. We therefore propose that employee performance be excluded as a mandatory element of the salary and be envisaged as a possibility. We also suggest that the base for salary compensation during leave from work be equal to the base salary increased for seniority	2008-2009			√
The Labour Law should define a modality of recruiting students and other individuals for internships, so that they can gain experience in a real work environment and enhance their careers. This type of engagement should be allowed wherever practical knowledge is important for the individual's employment prospects and future career, regardless of whether or not the individual possesses the degree required for the job for which he is being trained (e.g. students). Also, this type of engagement should be allowed regardless of the industry. To that end, the limitations imposed by the current provisions regulating internships and vocational development should be removed.	2016			√
Introducing the option for employees to partially work outside the employer's premises (not only from home). The difference between work from home and remote work should be precisely defined (by workplace or work tools) and relativize the need to define the "workplace" as a compulsory element of employment contracts. The Occupational Health and Safety Law should define obligations of both the employer and employees for work outside employer's premises. Work organization flexibility needs to be expanded to include the possibility of introducing overtime, not only in connection with unexpected circumstances and emergencies. The employer and employees should have the freedom to agree on the reason and purpose of overtime, while employers should be entitled to contract a management fee that would also include compensation for managers' overtime	2018			√
The employer's obligation to provide the trade union with space and technical conditions in accordance with available space and financial resources, and enable access to the data and information necessary for performing trade union activities should be limited only to representative trade unions. Article 210 should be amended accordingly	2018			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is necessary to regulate in more detail the procedure for determining the employee's liability for breach of work duty and/or non-compliance with work discipline, i.e. the procedure in case of unsatisfactory performance, in such a manner as to provide that: (a) the employer is only obliged to state the reasons for termination, without having to deliver physical evidence to an employee, (b) if the employee is underperforming, the employer should merely notify the employee about this (without a written warning) and give him a reasonable deadline to improve his performance, (c) the statute of limitations should be extended (the subjective deadline of six months should be extended to at least one year and the objective deadline should be extended to three years), (d) the employer has the right to pass decisions imposing measures on the employee (termination of employment or milder measures) or releasing the employee from liability in electronic form and deliver such decisions electronically, (e) in the case the employee refuses to accept the decision served to him in the workplace, the decision should be deemed as served, and (f) the employer has the right to unilaterally release the employee from the duty of coming to work during the notice period (in cases when the notice deadline is prescribed/agreed), and pay him salary compensation in the amount of the employee's base salary	2018			√
Changes are also required to the Labour Law to define an alternative way of conducting formal communications between employer and employee, electronically and by using electronic documents. We also consider it necessary to amend three key items of the Law on Labour-Related Records: setting the document retention period at a maximum of five years from the date of employment termination, making it possible to keep electronic records and use different IT tools for this purpose and regulating the proper way of disposing of the hard copy employee records	2016			√
The threshold for the employer's duty to enact the Rules on Internal Organization and Job Classification should be increased from the current ten to 50 open-end employees, to reduce the administrative burden on the employer. Also, the modern way of doing business and the frequent changes in the internal organization of work require that provisions of the Labour Law be amended to regulate: (a) the right of the employer to publish the Rules and all amendments thereto in electronic form, (b) that the Rules and all amendments thereto may enter into force on the date of publication, (c) the discretion of the employer to regulate in its Rules whether it is necessary for the employee to possess a certain type and level of professional qualification , or fulfil other special conditions to perform a specific job, (d) that, in the event of a partial modification of the job description and/or name of the job titles in the Rules, the employer is not obliged to offer an annex to the employment agreement	2017			√
Law on Vocational Rehabilitation and Employment of Persons with Disabilities				
Because the regulations listed herein are considered particularly important and vital for attracting and maintaining foreign investments, and given that the very purpose of this Law is the inclusion of PwD, the FIC previously provided and is still putting forth a number of suggestions on how to improve the situation. To this end, here we underline the most important recommendations on how to improve the existing legal framework and practice:				

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Classify business activities subject to a limited application of the Law, due to their specific nature (e.g. private security, manufacturing, construction, etc.), meaning that, in these activities, the number of PwD that the employer must hire should be calculated relative to the number of employees in jobs that do not require special medical fitness pursuant to the law and/or nature of the business activity and that can be performed by employees with disabilities	2016			√
The assessment of and the issuing of a decision on working ability should be performed by the same body to accelerate the procedure. We suggest that the procedure and decision-making should be accelerated and the list of documents required by the authorities from the employee be reasonably decreased	2009			√
We believe that a more efficient manner for achieving a higher employment rate of PWD would be stimulating employers to employ such persons by way of incentives.	2009			√
Employment of Foreign Nationals				
Enhance the practical application of the Law, e.g. by shortening the period of time for issuing a residence permit, reducing the number of documents required during the procedure for acquiring a residence permit, etc.	2009		√	
The labour market test should be excluded in the case of hiring high-ranking managers	2015			√
The Central Registry's certificate regarding whether an employer, prior to filing a request for a work permit, had dismissed employees as redundant should contain the exact job title of the redundant employee	2015			√
Secondment of employees abroad				
Abolish the limitation of the duration of business trips abroad within a year, and instead leave to the employer to define the regime of a business trip, which excludes the application of the rules under the Secondment Law	2016			√
Allow secondment abroad for the purpose of vocational training also to entities which are not necessarily related to the employer by equity or control	2018			√
Allow the secondment abroad of employees under the age of 18	2016			√
Staff leasing				
The concept of staff leasing should be regulated by a separate regulation, which would govern all important issues with respect thereto (such as the relationship between the employer and an individual, the employer and the service user, the employee and the service user, occupational health and safety, etc.)	2009		√	
The concept of staff leasing should be regulated in such a manner that the relationship between leased staff and the users of staff leasing services should not result in the creation of an employment relationship	2010		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The conditions for the issue of operating licences and general business conditions for staff leasing agencies (including the fee for issuing operating licences to staff leasing agencies) should also be regulated by law. The law would thus create legal certainty, removing the possibility of discretionary decisions being handed down (e.g. by ministries) with regard to these important issues	2010		√	

THE LABOUR LAW 1.00

CURRENT SITUATION

The labor legislation underwent significant reforms during the pre-2014 cycle, but in the period that followed no extensive amendments were made to the Labor Law (RS Official Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017 and 95/2018; hereinafter: Labor Law or Law).

In November 2016 the Constitutional Court rendered a decision on the unconstitutionality of the Labor Law provision which enabled termination of employment if the employee's conduct constituted a criminal offence committed at work or in relation to work, regardless of whether criminal proceedings were filed against him. As a consequence, this provision was repealed and has not been in force since 24 February 2017. This means that an employer cannot terminate an employee's employment contract prior to the final court verdict on criminal conduct, which may take years.

The amendments to the Labor Law adopted at the end of 2017 prescribe that the employer must register the employee with the national social insurance prior to starting work. The sanction for non-compliance is prescribed by a new penal provision which refers to a special law in this area, the Law on the Central Register of Compulsory Social Insurance. However, the latter still envisages sanctions only for violating the three workdays registration deadline. Here the question arises as to the conflict between the penalty provisions of these two laws regarding this obligation. Moreover, by amending the penalty provisions of the Labor Law and by prescribing a fine within a specified band instead of a fixed amount, no longer provides for the possibility to have a penalty charge notice issued and pay half the fine.

At the end of 2018 the National Assembly adopted an authentic interpretation confirming that, in case a status change or other change of the employer results in registration of the successor employer as a newly established legal entity, the duration of a fixed-term employment with the newly established employer shall not accumulate the duration of a fixed-term employment with a predecessor employer. This means that the successor employer can, within one year following the date of its registration, enter new employment contracts with new employees, as well as employees taken over from the predecessor employer, for a fixed term of up to 36 months.

POSITIVE DEVELOPMENTS

In the previous year we have not seen improvements in this area, although we expect them, not only through amendments to the law but also in courts' decision-making, especially since the law allows the court to adjudicate the equivalent amount of up to six salaries to the employee even when the grounds for termination of employment are met, if it determines that the employer violated the procedure for employment termination prescribed by the Labor Law.

For the further development and implementation of the law, it will take courts' official opinions and authentic interpretations to achieve full compliance in interpretations of certain concepts.

REMAINING ISSUES

Certain provisions of the Labor Law still remain a potential problem for employers, primarily related to:

- The structure and calculation of salary and salary compensation for sick leave, national holidays, annual leave, paid leave, etc. – Salary structure in the Labor Law is quite complicated and regulated by imperative norms. Therefore, the international companies which are doing business in Serbia do not have the possibility to calculate salary for their employees as elsewhere in the world

where they operate, so they are practically forced to apply complicated salary structure and calculation in Serbia. Besides that, although the new Law on Health Insurance introduced certain novelties regarding the salary compensation during sick leave, there remains a problem that salary compensation is equivalent to the average salary in the previous 12-month period, the same as with salary compensation during national holidays, annual leave, paid leave, etc. This leads to a situation where salary compensation is higher (mostly due to bonuses) than the salary employee would get if he had worked. The direct consequence of this is inability to plan companies' budgets.

- On-the-job Training – When it comes to engaging persons outside employment for the purpose of professional development, the Labor Law in Article 201 envisages the possibility of engaging persons through a contract on vocational training or a contract on professional development. Given that for the conclusion of a contract on vocational training it is necessary that the law or a rulebook require passing an internship or a professional exam, while for the conclusion of the professional development contract it is necessary that a special regulation envisages professional training for work in the profession or specialization, the application of both of these contracts in practice is limited, especially when it comes to the private sector. In this way, along with the above-mentioned restrictions, work practices or engagement of students and graduate students who want to improve and acquire certain practical knowledge and skills for easier future employment, remain outside the scope of the Labor Law.
- Flexible work organization – is constantly evolving in practice and taking an increasingly important place in the development of companies and their relations with employees. However, for the time being, legal solutions are not keeping abreast of developments, so that inadequate provisions of the law regulating work outside an employer's premises have contributed not only to the challenges employers are facing in practice, but also to the unnecessary risks they have to take. This risk can be eliminated by defining in detail these categories of work, i.e. work from home, remote work, etc. and by relativizing the "workplace,",as a compulsory element of employment contracts, as well as by amending the Occupational Health and Safety Law, by defining the obligations of both the employer and employees for such types of work. Furthermore, irrespective of the type of employees' engagement, provisions which regulate overtime are rather restrictive and should be changed to allow employers greater flexibility when deciding to introduce overtime and compensation for overtime (through increased salaries or days off). This particularly relates to employees in management positions.
- Suspension from work, disciplinary procedure and termination of employment - The Labor Law does not clearly regulate: (a) the rules for a temporary suspension of an employee from work, in the event of violation of work duty and disrespect of work discipline, (b) a procedure in case of unsatisfactory work performance of an employee (c) a procedure in the event of the termination of an employment agreement before the expiration of probation work. As for the termination of an employment agreement before the expiry of the probation work, it is not quite clear whether the employer should submit to the employee a warning letter when the reason for termination is a breach of work duties or work discipline. Also, the subjective and objective statute of limitations of the termination of an employment agreement – six months from the date of fact finding / one year after the date of the occurrence of the facts, is too short, which particularly affects employers with a large number of employees, complex structures and processes, as well as those employers who can initiate the termination of employment agreement only after internal control determine the entire factual situation. For the aforementioned reasons, in complex cases, the legal deadlines are often missed, and there are situations where employees who have grossly violated their work duties or who did not respect work discipline remain in employment. As far as the termination of employment and the notice period, in practice, the problem is the inability to contract a notice period of more than 30 days in case of the termination of an employment agreement by an employee. This is especially relevant in the case of the termination of an employment agreement by a director or another management member, because it is very difficult to find an adequate replacement in such a short time.
- Digitalization in labour regulations – New information technologies have brought changes to all segments of life which inevitably affects the very essence of work and labour relations (virtual and online employers, digital employees, work at distance and on platforms, e-nomads, agile work, etc.) and which the existing labor legislation doesn't fully recognize. Having in mind that digitalization is an inevitability and that it is already applied or can have a wide application in labour relations, and since there is both a law regulating electronic documents and a major breakthrough in the Law on the General Administrative

Procedure, it is of great importance for all companies looking to invest in the digitalization of their business operations to amend the labour regulations by defining an alternative way of conducting formal communications between the employer and employees electronically and using electronic documents. Along with the change in relevant provisions of the Labor Law, we also consider it necessary to amend the Law on Labour-Related Records and adjust the obsolete regulation to contemporary digitalization processes, by introducing the possibility of keeping documents in electronic form and adjusting the safekeeping periods for documents. If work on digitalization is intensified, positive effects on the business would be multiple, primarily through the improvement of business efficiency, cost savings, but also with significant ecological effects (minimum use of paper).

FIC RECOMMENDATIONS

- We suggest to prescribe that employee performance is only an option and not the mandatory part of salary. We also suggest the base for salary compensation during leave from work to be equal to the base salary increased for seniority. That would be a great relief to all employers to manage salaries and to have more flexibility when contracting a salary, but also regarding budget planning, while salary structure itself would be much more comprehensible.

- We propose amendments to the Labor Law in the part regulating vocational training and development. This law should provide for modalities for the engagement of students and other persons without an employment contract (both in and outside the area of education) in order to acquire practical knowledge and experience in a real working environment, career development and easier future employment. The existing provisions on vocational training and development should further remove the conditions limiting the possibility of such engagement regardless of the activity of the employer and whether it is the public or private sector. The competent ministry may determine all necessary mechanisms to prevent the misuse of this institute, if this was the reason for imposing restrictions in Article 201.

- Introducing the option for employees to partially work outside the employer's premises (not only from home). The difference between work from home and remote work should be precisely defined (by workplace or work tools) and relativize the need to define the "workplace" as a compulsory element of employment contracts. The Occupational Health and Safety Law should define obligations of both the employer and employees for work outside the employer's premises. Work organization flexibility needs to be expanded to include the possibility of introducing overtime, not only in connection with unforeseen circumstances and emergencies. The employer and employees should be free to agree on the reason and purpose of overtime, while employers should be entitled to contract a management fee that would also include compensation for managers' overtime.

- It is necessary to: (a) more clearly regulate the cases of unsatisfactory work performance of an employee and define the shortest appropriate period for the employee to improve performance, (b) extend the statute of limitation periods for the conduct of proceedings (the subjective period of 6 months to be extended to at least one year and the objective period to 3 years), (c) the statute of limitations should be extended (the subjective deadline of six months should be extended to at least one year and the objective deadline should be extended to three years), (d) the employer should have the right to pass decisions imposing measures on the employee (termination of employment or milder measures) or releasing the employee from liability in electronic form and deliver such decisions electronically, (e) in the case the employee refuses to accept the decision served to him in the workplace, the decision should be deemed as served, and (f) the employer has the right to unilaterally release the employee from the duty of coming to work during the notice period (in cases when the notice deadline is prescribed/agreed), and pay him salary compensation in the amount of the employee's base salary, (f) it is necessary to amend the Labor Law in the part referring to Article 36, paragraph 4 so as to define more precisely the procedure for terminating an employment agreement before the expiry of the probation period, in such a way that the employer is not obligated to conduct the procedure from Article 180 of the Labor Law even in the case when the reason for termination is a breach of work duty or work discipline.

- For the purpose of keeping pace with trends, solutions and possibilities that the digitalization process entails, it is necessary to amend the Labor Law so as to define an alternative way of conducting formal communications between the employer and employees electronically and using electronic documents, the electronic signature, electronic delivery, the electronic bulletin board, electronic record keeping, etc. Also, we consider it important to amend the Law on Labour-Related Records as regards three key items: setting the document retention period at a maximum of five years from the date of employment termination, making it possible to keep electronic records and use different IT tools for this purpose, and regulating the proper way of disposing of the hard copy employee records.

LAW ON VOCATIONAL REHABILITATION AND EMPLOYMENT OF PERSONS WITH DISABILITIES 1.00

CURRENT SITATION

Since the adoption of the Law in 2009, the goal of the legislature has been to raise awareness and increase employment of persons with disabilities (PwD) in all industries, by applying the same rules to all industries, regardless of their key differences. In that respect, the legislature's disregard of the fact that some industries require full working ability caused significant challenges for employers, which will be difficult to overcome.

POSITIVE DEVELOPMENTS

There were no changes in the field of PwD employment and inclusion in relation to the previous period. The impression is that neither the legislature, nor the implementing institutions have made this legislative area a focus of their attention.

REMAINING ISSUES

Problems remain the same and are reflected in the following:

- The problem for employers is the lack of staff that would apply for jobs appropriate for PwD.
- Working in some industry sectors (such as construction, private security, manufacturing, etc.) requires specific medical fitness and it is therefore practically impossible to employ PwD.
- Failure to carry out the classification of business activities of employers that, due to their nature, cannot be subject to the application of the Law in the same way as business activities not requiring special medical fitness or special mental or physical abilities of employees for certain jobs. Furthermore, companies selling services rather than products, where employees with special mental and physical characteristics are a key factor in performing core business activities, are unable to meet the requirements set by this Law.
- The Law on Vocational Rehabilitation and Employment of Persons with Disabilities is in conflict with the Law on Private Security. The latter stipulates that, starting from 1 January 2017, private security activities can only be carried out by persons with an appropriate license the acquisition and maintenance of which requires appropriate mental and physical abilities. This especially applies to employees handling weapons, who are required to undergo annual health check-ups. Thus, companies from the private security industry are additionally prevented from complying with provisions of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities.
- Although there is a possibility for current employees to undergo an assessment of their working ability to be recognized as PWD, in practice such a procedure is very complex and administratively cumbersome, as it includes the submission of numerous documents by the employee and the involvement of different state authorities with somewhat overlapping powers within just one procedure (the National Employment Service [NES] and the National Pension and Disability Insurance Fund [NPDIF].

FIC RECOMMENDATIONS

Because the regulations listed herein are considered particularly important and vital for attracting and maintaining foreign investments, and given that the very purpose of this Law is the inclusion of PwD, the FIC previously provided and is still putting forth a number of suggestions on how to improve the situation. To this end, here we underline the most important recommendations on how to improve the existing legal framework and practice:

- Classify business activities subject to a limited application of the Law, due to their specific nature (e.g. private security, manufacturing, construction, etc.), meaning that in these activities the number of PwD the employer must hire should be calculated relative to the number of employees in jobs that do not require special medical fitness pursuant to the law and/or nature of the business activity and that can be performed by employees with disabilities.
- The assessment of and the issuing of a decision on working ability should be performed by the same body to accelerate the procedure. We suggest that the procedure and decision-making should be accelerated and the list of documents required by the authorities from the employee be reasonably decreased.
- We believe that a more efficient manner for increasing the employment rate of PwD would be to incentivize employers with subsidies for their employment.

EMPLOYMENT OF FOREIGN NATIONALS 1.33

CURRENT SITUATION

Employment of foreigners is primarily regulated by the Law on the Employment of Foreigners from 2014 and the Law on Foreigners from 2018, both of which were last amended in April 2019.

The employment (via an employment contract and on other basis) and self-employment of foreigners in Serbia is subject to obtaining a work permit, except in cases specifically listed in the Law on the Employment of Foreigners.

The Law on the Employment of Foreigners envisages two types of permits to work: (i) personal work permit, enabling foreign nationals who have a permanent residence permit, as well as refugees and other special categories of foreign nationals, to work, be self-employed, and exercise unemployment rights in Serbia; and (ii) work permit which is further classified as: work permit for employment, work permit for self-employment, and work permit for special cases of employment (seconded employees, movement within the company, independent professionals and professional training). A personal work permit is issued at the personal request of a foreign national, whilst a work permit (except for a work permit for self-employment) is granted at the request of the employer.

For a given time period, a foreign national who seeks employment in Serbia may be granted only one type of permit to work, and a foreign national may only conduct the business activity for which he/she was issued the work permit. A requirement for obtaining a work permit is holding a temporary residence permit in Serbia, or visa for longer stay issued on the grounds of employment (type D visa), and a work permit is issued for the period of validity of the temporary residence/type D visa. All of the abovementioned types of work permits have specific requirements with regard to the necessary documentation and conditions that have to be fulfilled for their issuance.

POSITIVE DEVELOPMENTS

Amendments to the Law on the Employment of Foreigners

from 2017 and 2018, as well as the new Law on Foreigners adopted in 2018, have contributed to the creation of more favourable conditions for the employment of foreigners. Amendments to both laws from April 2019 are aimed in the same direction, as their main goals are to simplify and accelerate the procedure for the employment of foreigners, as well as to better position Serbia to attract more investments and create a more favourable business environment.

These amendments include, inter alia, the following significant changes:

- possibility of applying for a work permit on the basis of a type D visa issued on the grounds of employment. The permit is issued for the period of validity of such type D visa (maximum of 180 days). To extend the work permit, the foreigner will have to apply for a temporary residence permit;
- possibility for a Serbian employer to apply for a work permit on behalf of the foreigner, while the procedure of obtaining type D visa is still in progress. This will enable the foreigner to start working for the Serbian employer as soon as he/she enters the country;
- possibility of electronic application for issuance/extension of temporary residence permit, even from abroad;
- possibility for a foreigner to apply for issuance/extension of both a temporary residence permit and a work permit in a single procedure before the competent authority. The possibility of applying electronically has also been introduced; and
- introduction of the National Employment Service's (NES) obligation to obtain ex-officio the opinion and consent of the competent ministries, which are necessary for the issuance of a work permit for seconded persons and a work permit for movement within the company.

If administered properly, these changes should simplify and accelerate the employment of foreigners in Serbia.

The provisions pertaining to type D visa as an additional basis for the issuance of work permits and the possibility of electronic application for temporary residence permits shall apply as of 1 January 2020, whereas the provisions regulating the possibility of filing a single application for a temporary residence permit and a work permit shall apply as of 1 December 2020.

REMAINING ISSUES

Despite the benefits provided by the latest amendments to the Law on Employment of Foreigners and the Law on Foreigners, certain restrictions for employers imposed by the Law on Employment of Foreigners still create problems in practice, and it is safe to assume they will continue to do so in the future. This particularly refers to the provisions prescribing that a work permit will only be issued to an employer if that employer had not dismissed employees as redundant prior to filing a request for a work permit. A labour market test is still required for all situations of obtaining a work permit for employment, which creates problems in practice when it comes to hiring senior management. Also, the issue of the maximum period of validity of residence and work permits (up to one year) is still outstanding, and the provision of the Law on Employment of Foreigners which stipulates that a work permit may be issued on the basis of an approved temporary residence makes the procedure for obtaining a work permit significantly more difficult, given that obtaining a temporary residence permit is an excessively complex and time-consuming process. The new Rulebook on Work Permits from August 2018 further complicates the procedure for obtaining a work permit, as the complete documentation must be submitted in the original or certified copy, which affects the length of the procedure for obtaining work permits, as well as the costs. Under amendments to immigration laws from April 2019, an application for the extension of a work permit for seconded persons and for movement within the company is to be submitted to NES at least 60 days before the expiration of the previous work permit, while prior to these amendments it was possible to file for extension within 30 days before the permit has expired.

FIC RECOMMENDATIONS

- Enhance the practical application of the Law, e.g. by shortening the period of time for issuing a residence permit, reducing the number of documents required during the procedure for acquiring a residence permit, etc.

- The labour market test should be excluded in the case of hiring high-ranking managers.
- The Central Registry's certificate regarding whether an employer, prior to filing a request for a work permit, had dismissed employees as redundant should contain the exact job title of the redundant employee.

SECONDMENT OF EMPLOYEES ABROAD 1.00

CURRENT SITUATION

The Secondment Law has been in effect since 13 January 2016, regulating the secondment of employees abroad by a Serbian employer for the purpose of temporary work or vocational training abroad. The Secondment Law defines the following types of secondment: (i) performance of investment and other works and provision of services, pursuant to a business cooperation agreement concluded with a foreign partner; (ii) work or professional training at the employer's business units established abroad; and (iii) work or professional training in the context of inter-company movement (which includes secondment to a foreign employer that has a significant equity interest in the Serbian employer or exerts controlling influence over the Serbian employer, or to such foreign company which is, together with the Serbian employer, under control of a third foreign company).

An employer can second abroad only its employees, and not persons engaged outside employment. The employer and the employee are to conclude an annex to the employment agreement regulating the terms of the secondment (the mandatory elements of the annex are prescribed by the Secondment Law). The employee must be employed at that employer for at least three months prior to secondment (this condition does not apply if the secondment assumes work which falls within the employer's prevailing business activity, and if the number of employees to be seconded does not exceed 20% of the total number of employees at the employer; furthermore, this condition does also not apply in certain cases of secondment to Germany).

An employee may be seconded abroad only with his written consent. When the possibility of secondment abroad is stipulated in the employment agreement, no additional consent is required, but the employee may refuse secondment due to justified reasons provided by the Secondment Law (such as during pregnancy). The initial duration of secondment is limited to 12 months, with the possibility of extension. In case of a secondment of definite-term employees, the duration of such secondment may not exceed the term of their employment, and the time spent on secondment does not count toward the maximum statutory duration of definite-term employment.

The employer is obliged to register the change of the seconded employee's social insurance grounds in the Central Registry of Mandatory Social Insurance. At such registration, the employer is obliged to state the host country, as well as any subsequent changes of the host country.

With amendments to the Secondment Law that have been in force since 7 July 2018, employers are no longer obliged to report a secondment to the Ministry of Labour, nor to submit to the Ministry of Labour the certificate issued by the Central Registry of Mandatory Social Insurance.

POSITIVE DEVELOPMENTS

There were no positive developments in this area in the past period, with regard to the previous edition of the White Book.

REMAINING ISSUES

Limiting secondment abroad for the purpose of vocational training only to the employer's business units abroad, and only to a group of entities affiliated with the employer on the basis of equity share or control, has been disputed in practice. By not allowing secondment for the purpose of vocational train-

ing at companies abroad that are not related to the domestic employer on the basis of equity or control, but on some other basis (e.g. contractual relationship), the movement of employees seeking training abroad is unnecessarily constrained.

The Secondment Law does not apply in the case of assigning employees to a business trip abroad, provided that such business trip does not last more than 30 days on end, or more than 90 days in total within a calendar year. Although this provision was prescribed in order to differentiate between a secondment and a business trip, limiting the duration of business trips may trigger the application of rules on secondment abroad even in situations where the employee's stay is, by its very nature, a business trip. The limitation of the duration of business trips seems especially inadequate when it comes to managerial positions requiring frequent business trips.

The Secondment Law does not allow seconding abroad employees under the age of 18 (unless there is a statute which regulates otherwise). This limitation is unnecessary, having in mind that secondment for the purpose of vocational training can be useful for employees between the age of 15 (the statutory age for employment) and 18.

FIC RECOMMENDATIONS

- Abolish the limitation of the duration of business trips abroad within a year, and instead leave to the employer to define the regime of a business trip, which excludes the application of the rules under the Secondment Law.
- Allow secondment abroad for the purpose of vocational training also to entities which are not necessarily related to the employer by equity or control.
- Allow the secondment abroad of employees under the age of 18.

STAFF LEASING 2.00

CURRENT SITUATION

In early 2013 the Republic of Serbia ratified the International Labour Organization's (ILO) Private Employment Agencies Convention (No. 181), committing itself to regulating staff leasing in the following 12-month period, as well as enabling the work of private employment agencies (which, inter alia, offer services of staff leasing). Although several years have passed since then, Serbia still does not have a law on staff leasing.

POSITIVE DEVELOPMENTS

In late 2018 the Ministry of Labour, Employment, Veteran and Social Affairs published the first draft of the Law on Temporary Agency Employment, followed by public consultations on the draft where stakeholders provided numerous remarks and suggestions. However, as the social partners could not agree on certain key provisions of the first draft of the law (for example on quotas of leased employees, on the possible introduction of an agency deposit, as well as on the definition of the term comparable employee), it was returned for revision to the Ministry. After further consultation between the social partners and the competent ministry, on 1 August 2019, the final text of the Bill on Temporary Agency Employment was adopted by the Government of the Republic of Serbia. According to the position of the Government, this area will be finally regulated in line with international standards of the International Labor Organization (ILO) and the European Union (EU), and the so-called agency employees will be protected to the maximum. Namely, agency employees will be guaranteed equal salary and other working conditions (working hours, absences, vacations), safety and health at work and other working conditions applicable to employees directly employed by the employer. The Bill on Temporary Agency Employment has been in parliamentary procedure since 2 August 2019, but a final text of the law has not yet been passed by MPs.

The competent ministry, while preparing a final draft of the law, only partially took into consideration the FIC's suggestions for the improvement of the draft law obtained during the public consultation process. Among others, the following recommendations of the FIC were accepted (partially):

- The definition of the Comparable Employee was partially accepted.
- Restrictions on the conclusion of agreements on the assigning of employees - the maximum number of employees that can be assigned to the employer-user has been determined, but only if they are fixed-term employees, while there are no restrictions for permanent employees.

REMAINING ISSUES

Although staff leasing has been tolerated in practice for several years by the relevant authorities owing to a lack of legal framework, it may ultimately lead to problems for employers using this concept. This means that, formally, employers could be sanctioned for misdemeanour because leased employees do not have an employment contract with the company by which they are leased. Also, there is a risk (some cases have been evidenced in practice) that leased workers will claim to be employed with the company where they work, although they do not have any kind of contract with that company – this mostly happens in cases when their work engagement ceases due to the termination of business cooperation between the staffing agency and the company using its services.

Bearing in mind the above, the unregulated issue of staff leasing remains a potential source of great legal uncertainty and a problem for employers who have the need to hire people in this way.

Most of the FIC recommendations have not been accepted by the Bill on Temporary Agency Employment, including, inter alia, the following:

- Recommendations regarding the provisions of the law prohibiting the conclusion of an agreement on the assigning of employees were not accepted (Article 13).
- Duration of the assignment - the fiction of the transformation of permanent employment is related to the employer-user (Article 13).
- Termination of the employment agreement - for reasons arising from the employer-user: new rules are introduced in the field of the initiation of a labor dispute, although this is already regulated by the Labor Law (Article 23).
- Provisions for compensation of loss - subsidiary liability of the agency, instead of joint and several liability (Article 32).
- The prescribed amounts of fines for misdemeanors are too high (Article 35).
- Implementation of the law as of 1 March 2020 (Article 41).

FIC RECOMMENDATIONS

- The concept of staff leasing should be regulated by a separate regulation, which would govern all important issues with respect thereto and be aligned with accepted international standards (primarily ILO and EU documents), as well as with the legislation of the Republic of Serbia (i.e. Labor Law).
- Article 2, paragraph 5 of the Bill on Agency Employment is unclear, and needs to be specified, reformulated or deleted, bearing in mind that it is unclear what happens in a situation where an employer has a large number of employees with the same level of education, that is, the level of qualification.
- The Law on Temporary Agency Employment should not establish quotas for leased employees, i.e. maximum number of leased employees in relation to the total number of employees, regardless of the type of employment relationship (fixed-term or permanent), as such a concept has no grounds in the EU Directive 2008/104/EC, ILO documents, or legislative practice in a majority of EU countries.
- The fiction of the transformation of permanent employment should be related to the agency, as the employer of the employee.

- Initiation of a labor dispute - the possibility of initiating a labor dispute and the content of a claim in such a dispute are regulated by the provisions of the Labor Law. There is no need to introduce new rules in this area, especially given that this would differentiate between employees and assigned employees, and the primary objective of this law is to equalize the rights of these two categories of employees.
- There is no basis for subsidiary liability of the agency for the compensation of loss of the assigned employee, but solely and exclusively for joint and several liability.
- Reduce the amounts of fines for misdemeanors, or divide misdemeanors into several groups by the amount of the fine imposed (as done in the Labor Law).
- Having in mind the impact that the Law on Temporary Agency Employment has on the economy, the Law should provide for a long enough vacatio legis period so that companies may adequately prepare for its implementation, and depending on the date of entering into force, we consider it necessary to delay the application of the law for at least 6 (six) months from the date of entering into force.

HUMAN CAPITAL AND DUAL VOCATIONAL EDUCATION 1.25

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Human Capital				
Improvements of the educational system should be continued. To this end, regular contact between the FIC and the Government, the ministers of education, youth and sport, as well as the universities. The FIC and the business community in Serbia are ready to provide support and put their experts at disposal. Based on an analysis of needs of the economy and the real sector, new educational profiles should be created and implemented and the university enrolment quotas should be adjusted in line with the market needs	2008		√	
Define the legal framework for the employer-student relation to simplify the implementation of vocational internships in parallel with regular education	2017			√
Define the legal framework for preparing persons with high education profiles to work independently in their profession, regardless of whether they meet the requirements for taking an expert exam and/or conducting an internship program	2017			√
The National Employment Action Plan should clearly define, redefine and widen the range of educational profiles that are going to be included into the action plan and employment policy, i.e. be attuned to the needs of the market and employers	2017			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Design a human capital internal migration plan for Serbia to evenly develop underdeveloped regions and lessen the gap in the economic needs of different parts of the country, prevent migration from Serbia and stimulate citizens to search for a better place for life and work in the country, and not abroad	2018			√
Dual Vocational Education				
By-laws should be adopted to regulate certain aspects of the Law in more detail and enable a more efficient implementation of the Law in practice	2018		√	
A sustainable dual education funding model and possible incentives to attract companies in Serbia to join this system should be defined	2016			√
Provisions on payment of students by the employer should be regulated in more detail, especially in terms of evaluating the performance of the engaged students and the possibility of introducing a performance-based compensation system	2017			√

HUMAN CAPITAL 1.20

CURRENT SITUATION

The state of the labour market has slightly changed in comparison to the previous year. The unemployment rate in Serbia is 12.8% according to the data of the Statistical Office of Serbia, which is a decrease against last year's 14.8%. The unemployment rate varies across Serbia, reflecting to a great extent the economic conditions in different parts of the country. The lowest unemployment rate was registered in Vojvodina, which poses a great challenge to employers in terms of recruiting and selecting adequate staff.

By amending the law in the area of labour relations and employment, the state is trying to strike a balance between budget revenues and the economy's needs, creating an environment conducive to new investments and employees' rights. By decreasing the rate of contribution for unemployment on salaries, the government has made an effort in that direction.

The educational structure and the labour market indicate that finding candidates who meet the requirements of high-level, expert and strategic positions is challenging. Also, finding candidates for lower positions is becoming a bigger challenge. The retention of high-skilled workers and development of own resources are still very popular trends, having in mind market conditions.

The introduction of dual education is expected to yield qualified staff capable of working independently in their profession immediately upon completing their formal education, but effects of these changes will only be seen in the long term. Moreover, with the introduction of the National Qualifications Framework, the educational system has proved its readiness to adapt to market conditions and enable market players to formalize the education of certain specialist profiles that are in demand. The real effects of these new legal solutions will be seen in the upcoming period. However, not many colleges are capable of providing their students with practical knowledge. As a consequence, companies are forced to invest significant resources in training new employees.

POSITIVE DEVELOPMENTS

Since the Law on Dual Education and the National Qualifications Framework were adopted in the previous year, their effects are yet to be seen, which means that there has been no significant improvements in this area.

REMAINING ISSUES

Despite the many efforts of the Government and legislators to put a stop to the harmful phenomena of the grey economy and unregistered employment, they are still present. The number, age structure and qualification of labour inspectors are among the key challenges the state has to address. Unfair competition, the uneven playing field in

the market in various, especially low-profit industries, and a large number of companies that fail to comply with basic legal and fiscal obligations toward employees and the state, as well as unforeseeable labour costs, are a major obstacle to the development of the market and human capital.

The educational system needs to be improved and better connected with the business community. This would lessen the gap between education and employees' needs, at the same time contributing to improving Serbia's image as a desirable investment location.

The population age structure should be rejuvenated and internal migrations of human capital in Serbia should be stimulated to evenly develop underdeveloped regions, reducing the gap in the economic needs of different parts of the country. The decision of foreign investors to enter a certain market is conditioned by the quality and structure of workforce as well as clearly defined labour costs.

FIC RECOMMENDATIONS

- Improvements of the educational system should be continued. To this end, regular contact between the FIC and the Government, the ministers of education, youth and sport, as well as the universities. The FIC and the business community in Serbia are ready to provide support and put their experts at disposal. Based on an analysis of needs of the economy and the real sector, new educational profiles should be created and implemented, and the university enrolment quotas should be adjusted in line with the market needs.
- Define the legal framework for the employer-student relation to simplify the implementation of vocational internships in parallel with regular education.
- Define the legal framework for preparing persons with high education profiles to work independently in their profession, regardless of whether they meet the requirements for taking an expert exam and/or taking part in an internship program.
- The National Employment Action Plan should clearly define, redefine and widen the range of educational profiles that are going to be included into the action plan and employment policy, i.e. be attuned to the needs of the market and employers.
- Design a human capital internal migration plan for Serbia to evenly develop underdeveloped regions and lessen the gap in the economic needs of different parts of the country, prevent migration from Serbia and stimulate citizens to search for a better place for life and work in the country, and not abroad.

DUAL VOCATIONAL EDUCATION 1.33

CURRENT SITUATION

In November 2017 the Law on Dual Education was adopted in Serbia, regulating the content and implementation of dual education, as well as mutual rights and obligations of all participants, the material and financial security of students, and other issues relevant for the dual education system. The Law is envisaged to be applied starting with the 2019/2020 school year.

Pursuant to the provisions of the Law:

- Dual education will be performed on the basis of a cur-

riculum to be adopted by the ministry responsible for education.
- Mutual rights and obligations of employers and schools will be regulated by a special agreement on dual education, to be concluded for a minimum period of three to four years, in accordance with the curriculum. The school may enter into such an agreement with one or more companies, and the company may also conclude such an agreement with one or more schools.
- Mutual rights and obligations of employers and students will be regulated by a special on-the-job training agreement to be concluded between the employer on the one side, and the parent or legal guardian of a student under the age of majority, or an adult student, on the other;
- Both the dual education agreement and on-the-job training agreement may be terminated under the terms stipulated by the Law. Inter alia, the employer may terminate the agreement on dual education in case of unforeseen technological, economic or organizational changes preventing, aggravating or substantially changing the performance of the employer's activity.
- For the purpose of dual education, the employer is obliged to provide an instructor with experience of no less than three years in the relevant profession, one who has undergone the appropriate training and has acquired a relevant licence issued by the Serbian Chamber of Commerce. In addition, there are other conditions the employer has to fulfil in order to take part in the on-the-job training system, such as: conducting a business activity that enables on-the-job training; having the appropriate work space and equipment; ensuring the implementation of measures for health and safety at work; no bankruptcy or liquidation proceedings against the employer, etc.
- The employer will provide the students with personal protective equipment at work, compensation for actual costs of transport from school to work and back, meal allowance, and insurance against injury while attending on-the-job training.
- Students' rights in dual education are protected in accordance with the laws regulating the education system, secondary education, employment and safety at work, the regulations prohibiting children from performing dangerous work, and this Law. While attending on-the-job training with the employer, students shall not be discriminated against, or subjected to physical, psychological, social, sexual, digital, or any other form of violence, abuse and neglect.
- The share of on-the-job training in the total number of classes of vocational subjects attended by the student ranges from a minimum of 20% to a maximum of 80%.
- On-the-job training at a company can be performed throughout the entire school year, from 8 a.m. to 8 p.m., up to six hours per day, i.e. up to 30 hours per week.
- For each hour of on-the-job training, the employer will pay the student compensation in the amount of no less than 70% of the minimum wage.

POSITIVE DEVELOPMENTS

A positive development compared to the previous edition of the White Book is the adoption of by-laws envisaged by the Law:

- By-law on the organization, composition and method of work of the Commission for determining the fulfillment of conditions for the performance of learning through work with the employer ("Official Gazette of the Republic of Serbia" No. 46/2018), adopted by the Serbian Chamber of Commerce and effective from 23 June 2018.
- By-law on the training program, detailed conditions and other matters of relevance for passing the instructor's exam ("Official Gazette of Republic of Serbia" No. 70/2018), adopted by the Ministry of Education, Science and Technological Development and effective from 29 September 2018.
- By-law on the method of assigning students for learning through work ("Official Gazette of the Republic of Serbia" No. 102/2018), adopted by the Ministry of Education, Science and Technological Development and effective from 29 December 2018.
- By-law on the detailed conditions, method of work, activities and composition of a career guidance and counselling team in a secondary school providing educational profiles in dual education ("Official Gazette of the Republic of Serbia" No. 2/2019), adopted by the Ministry of Education, Science and technological development and effective from 24 January 2019.

The Serbian Government adopted a bill on dual education in higher education on 13 June 2019.

REMAINING ISSUES

The effects of the practical implementation of the Law on Dual Education remain to be seen as the law will only apply starting from the school year 2019/2020.

The successful functioning of the dual education system requires a continuous assessment of labour market demand and the implementation of dual education programmes for vocational profiles in demand by companies doing business in Serbia.

It is necessary to determine how the law on Dual Education is to apply in relation to the Labour Law, the Law on Occupational Health and Safety, and the Law on the Prevention of Workplace Harassment and other laws regulating different aspects of employment. The Law provides for the protection of students in accordance with the foregoing laws in general terms, but the by-laws should regulate these and many other practical issues in more detail.

The law envisages remuneration for students attending on-the-job training programmes amounting to EUR 100 per month on average. This gives students an unfair competitive advantage over currently employed workers or persons outside the dual education system applying for the same job vacancies.

The performance of students will differ in quality, which raises the question of whether all students hired for the same jobs should be paid equally or whether their performance should be evaluated in some way.

FIC RECOMMENDATIONS

- By-laws should be adopted to determine how the Law on Dual Education is to apply in relation to the Labour Law, the Law on Occupational Health and Safety, and the Law on the Prevention of Workplace Harassment and other laws regulating different aspects of employment.
- A sustainable dual education funding model and possible incentives to attract companies in Serbia to join this system should be defined.
- Provisions on payment of students by the employer should be regulated in more detail, especially in terms of evaluating the performance of the engaged students and the possibility of introducing a performance-based compensation system.