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, 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. Staff leasing and staff leasing agencies' work have been regulated by adopting and entering into force Staff Leasing Act. However, there are still aspects in this area that could be improved.

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

THE LABOUR LAW

CURRENT SITUATION

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

In November 2016 the Constitutional Court rendered a decision on the unconstitutionality of the Labour 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 Labour 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 Labour 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.

The above-mentioned amendments to the Labour Law were adopted with the explanation of the petitioner that their aim is to enable:

- a better protection of mutual rights and obligations of employees and employers;
- conditions for collective bargaining and social dialogue with social partners;
- harmonization of labour regulations of the Republic of Serbia with the labour legislation of the European Union (EU Directive) and international law (International Labour Organization Conventions ratified by the Republic of Serbia);
- clarity of the norms of the Labour Law, in order to interpret them correctly and to provide for a good court practice; and
- increasing employment by attracting more investors and enabling a better labour turnover in the labour market.

The mentioned goals have not been achieved yet, namely, since the adoption of the amendments to the Labour Law from 2014 until today:

- certain provisions of the Labour Law remained inconsistent with EU Directives;
- Employers and employees face numerous problems related to the practical application of the Labour Law and other labour law regulations that are systematically related to the Labour Law. This is a clear indication that it is necessary to amend the provisions of the Labour Law that create doubts regarding their interpretation and application, as well as to amend the provisions whose application requires complicated or lengthy procedures;
- Judicial practice is still inconsistent in terms of application of the provisions of the Labour Law, which is partly a consequence of unclear or vague provisions of the Labour Law;

Last but not least, digitalization in business has led to the ultimate need to update the provisions of the Labour Law by enabling fast and reliable digital administration of rights and obligations arising from employment, and above all the adoption of all labour acts in in the form of an electronic document, with the possibility of using an electronic signature, in accordance with the Law on Electronic Document, Electronic Identification and Services of Trust in Electronic Business.

COVID-19

Recommendations of the Ministry of Labour
After the declaration of the state of emergency in the Republic of Serbia, the Ministry of Labour, Employment, Veterans and Social Affairs issued recommendations and announcements regarding the rights and obligations of employees and employers during the state of emergency caused by COVID-19 virus (work from home, benefits, employee rights who are in self-isolation, paid and unpaid leave, the rights of parents who have children under 12, temporary incapacity for work, use of annual leave, etc.) Guidelines have been obtained on certain controversial issues in practice, but many issues still remain open and unresolved.

Particularly vulnerable categories of employees
Based on the Decree on organizing the work of employers during the state of emergency, as well as on the measures to prevent the spread of COVID-19 virus, the Ministry of Public Administration and Local Self-Government issued a Recommendation for organizing work in public administrations and state institutions. The recommendation primarily applied to the employees in government bodies, public agencies, public services and local self-government units. However, the Ministry of Labour also issued a statement that the Recommendation should be applied to the employers in the private sector, if the employer's activity allows it. According to the Recommendation, the employer should primarily keep in mind that the persons with established chronic diseases and persons older than 60 are particularly vulnerable and that the parent of a child up to 12 years of age has special protection, and especially if he exercises parental rights alone or a work obligation has been established for the other parent. For the above mentioned employees, during the state of emergency it was necessary to enable work from home, and in cases where the activity and nature of work did not allow work from home, the employer was obliged to provide measures for protection and health of employees, as well as to organize work in shifts, so that a small number of employees could perform

work simultaneously in one room. Also, it was emphasized that the work schedule of the employed parent of a child under 12 should not coincide with the work schedule of the other parent who was also employed.

However, the Recommendation applied only for employees in the government bodies, public agencies, public services and local self-government units, excluding the private sector. It is necessary for the Ministry of Labour, Employment, Veterans and Social Affairs to adopt more precise and comprehensive guidelines for employers in the private sector when it comes to particularly vulnerable categories of employees.

Obtaining consent for paid leave in the case of Article 116 of the Labour Law electronically

At the proposal of the Ministry of Labour the Government of the Republic of Serbia adopted a Conclusion to give consent for sending employees on paid leave for more than 45 working days without prior opinion request from a representative trade union of a branch or activity established at the level of the Republic, with a due date no later than the day of the termination of the state of emergency. In this way, the prescribed procedure for sending employees on paid leave for more than 45 working days was shortened, and the fact that the reasoned request of the employer, the necessary documentation, as well as the decision of the Ministry was submitted electronically was especially important. It is necessary to establish this type of communication between employers and the Ministry of Labour as a regular practice that is also applicable in the absence of extraordinary circumstances.

Compensation of salary in the amount of 100% due to direct risk exposure for the purpose of performing work (self-isolation, isolation or employees suffering from the COVID-19 virus)

The Conclusion of 3.4.2020 was adopted, which primarily applies to doctors, medical staff, the army and the police. Employees who are temporarily absent from work due to direct risk exposure at work, such as the treatment, care of the sick because they are in self-isolation or isolation, or are infected with the COVID-19 virus are entitled to 100% salary compensation.

Employers can provide this right in the following way:
For the first 30 days of absence from work, employers should pay the amount of the compensation of salary from their own funds.

If the employee is temporarily prevented from working for more than 30 days, employers may, starting from the 31st . day, pay off the compensation of salary from the legally prescribed amount of compensation of salary from the funds of compulsory health insurance, and from its own funds to provide a difference of up to 100 percent of the compensation of salary. Employers are entitled to decide whether to apply the aforementioned provisions with a previous amendment to the general act or employment contract, so that the recommendation is not binding on employers in the private sector. However, the assessment of a higher right than the legally established amount of compensation of salary depends on the financial situation of a particular employer. In a situation where the private sector is affected by the effects of the pandemic and has difficulties in regular business, passing the difference in wage compensation up to 100% to employers is not a good solution. If the intention of the state was to provide special protection to employees who are directly exposed to the COVID-19 virus while performing their work, it is necessary to regulate that the compensation of salary of 100% is provided from the funds of the mandatory social insurance. Also, the mentioned Conclusion caused doubts in practice and problems with employees who, even in the situation when the employer did not change the general act, demanded payment of compensation of salary in the amount of 100%, even pointing out that it was an injury at work because employees were infected or were in contact with an infected person in the workplace. In the coming period, this issue will certainly be still relevant and will cause problems in practice.

Use of annual leave

The Government adopted a Conclusion dated 6.4.2020. year which recommends that the employers should enable to its employees the use of annual leave from 2019 until 31.12.2020 in a situation where their work obliges them to regularly perform work tasks in a state of emergency. As for the employees who are enabled to perform work outside the employer's premises (remote work and work from home), the employer is obliged to enable the use of a part of the annual leave for 2019. until 30.06.2020, in accordance with the Labour Law. Also, it is recommended for the employers to give priority to the use of the annual leave, especially in the situation when considering termination of employment, namely sending employees to the so-called "paid leave of absence " on the basis of Article 116 of the Labour Law. In regular circumstances, the provisions of the Labour Law on the use of annual leave are imperative in

nature and the employer and the employee cannot agree that the employee will use the annual leave from the previous year after June 30 of the current year. The Conclusion of the Government enables an exception to be made and employees who "have the obligation to perform regular work tasks" to be granted the use of annual leave even after the obligatory legal deadline. However, it is not entirely clear why the Government's Conclusion excluded employees who performed work outside the employer's premises from this possibility, since it is clear that in conditions of state of emergency and limited movement, these employees did not have the conditions to use their annual leave. they did so under normal circumstances.

Work from home

Before the declaration and during the state of emergency, employers in Serbia were faced with numerous challenges in how to organize work from home in a relatively short period of time, regulate relations with employees and harmonize their business with the recommendations of the Government and the Crisis Staff. Considering that the Labour Law regulates only the employment relationship that is established for the purpose of performing work outside the employer's premises, as well as the possibility for the employee and the employer to agree that the employee works from home certain part of working hours, within the agreed working hours, it is clear that the concept of working from home, which is recommended during the state of emergency (and which does not represent an employment relationship established for the purpose of performing work outside the employer's premises, or a type of occasional work from home within the agreed working hours) is not legally regulated. The need to resolve this gap in a pragmatic way during the state of emergency was recognized, and the Decree on organizing the work of employers during the state of emergency was passed. Pursuant to the said Decree, employers were obliged to enable work to be performed outside the employer's premises at all workplaces where this is possible on the basis of (i) a general enactment or employment agreement, or in situations where the general enactment or employment agreement do not regulate work from home, (ii) a unilateral resolution containing the duration of working hours and the manner of supervising the work of the employee. The enactment of the Decree did help to adjust the relations between the employer and the employee with relatively low administrative burdens. However, certain issues continued to cause difficulties and doubts in the application of the introduced solution in practice.

Primarily, the full pragmatism of arranging work from home in conditions of emergency, would necessitate the relaxation of the manner of delivery of resolutions for work from home and other documents to employees, given that the Labour Law provides for the obligation to personally submit resolutions deciding on rights, obligations and responsibilities of employees, at the employer's premises, as well as, when the said is not possible, strict rules of alternative delivery to the address of residence or stay or by posting on the notice board of the employer. The mentioned method of delivery was a particularly challenging request during the state of emergency, which once again confirmed that the amendments to the Labour Law should enable electronical formal communication between employers and employees, primarily via e-mail or other similar electronic communication channels.

The previously problematic issue of providing conditions for safe and healthy work by the employer in the case of work of employees from home has become relevant again. Namely, the Law on Safety and Health at Work stipulates that the employer is obliged to provide the employee with work at the workplace and in the work environment in which safety and health measures at work have been implemented, as well as that the employer is not relieved of obligations and responsibilities regarding the application of safety and health measures at work by appointing another person or transferring their obligations and responsibilities to another person. It remains unclear how employers meet their occupational safety and health obligations when work is conducted partially or completely from home, whether they are required to amend a risk assessment act, and even more so, how to assess that risk without entering the employee's workspace.

Finally, with the abolition of the state of emergency, the Decree on organizing the work of employers during the state of emergency ceased to be valid, and with it the basis for arranging work from home through a unilateral decision of the employer, provided by the Decree. However, in accordance with the recommendations of the competent authorities, and in order to ensure the safety of their employees, many employers continued to organize work from home, especially from the moment of the worsening of the epidemiological situation at the beginning of July. This also raised the question of the existence of a legal basis for further work of employees from home, the need to conclude an annex to the employment agreement to change the agreed place of work, which is (having in mind the

strict formality of the procedure for concluding an annex to the employment agreement) a solution which cannot be applied immediately, and which is exactly the response that the epidemiological situation has often required.

Status of employees referred to home self-isolation. During the state of emergency, but also after its abolition, employees who were exposed to COVID-19 carriers at the workplace or outside the workplace turn to a doctor, in order to obtain instructions for further action. In these circumstances, doctors refer these employees to home self-isolation, for a period of 14 to 28 days, since this is the estimated time interval during which symptoms of the disease may appear. However, doctors do not issue certificates and reports on temporary incapacity for work (remittances) to these employees, although this is the obligation of doctors, in accordance with Article 72 Paragraph 1 Item 4) and Article 161 of the Law on Health Insurance. The reason for the absence of remittances was not explained by the competent ministries.

In the absence of sick leave remittances, employers rely on verbal information from employees that a doctor has recommended them home self-isolation. Therefore, employers do not have a legal basis for the payment of salary compensation during the employee's absence from work, nor do employers know how long employees should be absent from work due to home self-isolation. Also, in these circumstances, employers face an increased risk of sick leave abuse.

The procedure for issuing certificates of temporary incapacity for work and sick leave is such that doctors issue them in paper form, so the question is raised whether the competent health authorities can organize the delivery of remittances in electronic form to the e-mail address of the patient (employee), so that employees can forward these remittances by e-mail to the employer.

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 Labour 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.

In order to enact comprehensive amendments to the Labour Law, it is necessary to take into account not only the requirements for harmonization of the Law in accordance with EU Directives, but also the problems faced by employers in practice in the Republic of Serbia, due to vague or unclear provisions of the Labour Law, or due to business requirements that are not yet regulated by the Labour Law.

REMAINING ISSUES

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

- **Employment for work outside the employer's premises.** Employers have doubts about the interpretation of the provision of the Law which prescribes that, in the case of work outside the employer's premises, the employment contract contracts should stipulate so-called compensation of other labour costs and the manner of their determination. The mentioned provision leaves room for different interpretations regarding whether the employer is obliged to determine these costs by a general act, namely by the employment contract, or the employment contract can leave the parties a freedom to agree whether in a particular case the respective costs have incurred to the employee or not.
- **Status of high school students and university students on work practice.** When it comes to engaging persons outside employment for the purpose of professional development, the Labour 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 and rare, especially when it comes to the private sector. In this way, along with the above-mentioned restrictions, work practices or engagement of high school students and university students who want to improve and acquire certain practical

knowledge and skills for easier future employment, remain outside the scope of the Labour Law, so employers in practice have difficulties with engaging young people, for their work engagement which would include learning through practice. In the absence of an appropriate form of contract, in order to implement the work practice of high school students and university students, employers most often use the contract on performing temporary and periodical jobs, since its flexible legal nature allows it, although the intention of the legislator was not to engage high school students and university students through the mentioned form of contract.

- **Criteria for annual leave.** Mandatory criteria (education, work experience, working conditions and contribution at work) determined by the Law for increasing statutory minimum for annual leave for employers are impractical and administratively burdensome. Instead of the Law determining the criteria for increasing the annual leave in advance, it would be more practical if the Law would leave it to the employer to determine the criteria for increasing the annual leave, whereby the amendments to the Law may stipulate that the employer may determine by a general labour act the criteria for annual leave increase.

- **Modification of the agreed working conditions in order to change the elements for determining the base salary.** Employers have difficulties in applying Article 171 Paragraph 1 Item 5) of the Labour Law, which stipulates that the employer may offer the employee amendments to the Employment Contract (Annex) in order to change the elements for determining the base salary. Namely, in order to eliminate ambiguities and for the purpose of legal safety, it would be necessary to adopt amendments to the Law, prescribing the elements for determining the basic salary. Also, Article 107 Paragraph 1 of the Law determines that the base salary is determined on the basis of conditions, determined by the rulebook, that are necessary for work on jobs for which the employee has concluded an employment contract and the time spent at work. Therefore, it is not clear from the Law whether the elements for determining the base salary are the same as the conditions for determining the basic salary, and it is also unclear by which general act it is necessary to determine the conditions or elements for determining the base salary, i.e. whether they are determined by the employment rulebook or by the rulebook on job systematization. The mentioned ambiguities and inconsistencies of legal provisions lead to problems in practice, when employers want to offer employees a change in the amount of base salary, because in the absence of clear legal norms, a large number of employers have not determined or clearly determined the elements or conditions for determining basic salary. Therefore, due to the mentioned vague and inconsistent legal provisions, the employer faces the problem that there is no formal legal basis to offer the employee a change in the agreed base salary.

- **Modification of the agreed working conditions for the purpose of transfer to another suitable job.** Article 171 Paragraph 1 Item 1) of the Labour Law prescribes that the employer may offer the employee a change in the agreed working conditions (annex to the contract) in order to transfer the employee to another suitable job, due to the needs of the process and organization of work. The court practice has taken the standing that in the offer for concluding an annex to the employment contract, it is necessary for the employer to explain in detail which specific needs of the process and organization of work led to the need to transfer the employee to another suitable job. Given this position of the court practice, it would be necessary to amend the provisions of Article 171 by: (a) either explicitly prescribing the employer's obligation to explain in detail the needs of the process and organization of work that led to the need to transfer the employee to other suitable job, considering that in the existing terminology prescribed by the Law employers rightly conclude that it is sufficient to prescribe in the offer for concluding an annex to the employment contract that the reason for transfer is "the need for the process and organization of work" given that the Labour Law uses this phrase; (b) or that, having in mind the views of the Supreme Court of Serbia regarding the transfer of an employee to other suitable job, the Law explicitly stipulates that the employer is not obliged to explain in detail in the contract annex the "needs of the process and organization of work" which led to a transfer to other jobs, provided that the needs of the process and organization of work are real (and not fictive), that the jobs are appropriate in terms of the provisions of the Law and that the Employee is trained to work on those jobs.

- **The structure and calculation of salary and salary compensation for sick leave, national holidays, annual leave, paid leave, etc.** Salary structure in the Labour Law is regulated so as it consists of salary for the work performed and time spent at work, salary based on employee's contribution to the employer's

business success (rewards, bonuses etc.) and other income based on the employment relation, according to the general act and employment contract. Furthermore, salary for the work performed and time spent at work is based on basic salary, work performance and increased salary. All those elements are regulated in more detail by general act and employment contract. The aforementioned structure is quite complicated and 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. That is why it is necessary to simplify the salary structure and its calculation. 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.

- **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.

- **Termination of employment due to technological, economic or organizational changes, subjective and objective statutes of limitations, notice period in case of dismissal by the employee.** Labour Law does not regulate clearly: the procedure of termination of employment due to technological, economic or organizational changes - redundancy. In cases of termination of employment when due to technological, economic or organizational changes the need to perform a certain job ceases or there is a reduction in the scope of work, the Labour Law did not regulate the procedure for the case of individual redundancy. Also, there are numerous doubts related to the redundancy program, and it is unclear whether the employer should first change the rulebook on job systematization or adopt a redundancy program. Furthermore, subjective and objective statute of limitations for termination of employment contract - six months from the date of learning about the facts / one year from the date of occurrence of the fact, is too short defined, which is especially evident for employers with large numbers of employees, complex structures and processes, mainly regarding the employers who can initiate the procedure for termination of the contract only after the internal controls determine the overall factual situation. For these reasons, in complex cases, legal deadlines are often breached, and the situation is that employees who have grossly violated their work obligations or have not respected work discipline remain employed. In practice, a major problem is the inability to arrange a notice period longer than 30 days in the event of dismissal by an employee. This is especially evident when the employment termination is initiated by the director or another member of the management, because usually it is extremely difficult to find adequate replacement in a short period of 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 labour 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 given that the preconditions for implementation are regulated primarily by the Law on Electronic Document, Electronic Identification and Trust Services

in Electronic Business (hereinafter referred to as: E-business Law) but still limited by traditional regulation and interpretation of the provisions of the Labour Law, 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 administrating rights and obligations from labour relations with usage of electronic documents (decision's enactment and conclusion of contracts), primarily through e-mail or other similar electronic communication channels. It is not an issue that the first contact and conclusion of the first contract between the employee and the employer is in the traditional, paper form, or with the use of a qualified electronic signature. However, it is necessary on that occasion to enable the introduction of official means of electronic communication and the mechanism of authorization of employees and employers' representatives through more flexible mechanisms such as electronic identification schemes, based on which any subsequent interaction between the two parties can be validly conducted electronically. Although Art. 7 of the E-business Law stipulates that the electronic form is one of the forms of written form, thus the electronic form is fully equated with the traditional written form which implies paper form, however, we conclude that the Labour Law did not actually follow the trends of digitalization. Namely, in the provisions in which the Labour Law regulates the conclusion of a contract, the written form, in fact, presupposes the conclusion of a contract in paper, with the handwritten signature of the authorized person between the employer and the employee. The situation is identical with the decisions on termination of employment, as well as the decisions on the rights and obligations of the employee. In support of this is the norm of Article 75, paragraph 6 of the Law, which allows the employer to submit in electronic form a request for deciding on the use of annual leave, but at the request of the employee, the decision must be submitted in writing. Also, the problem is the rigid position of the Labour Inspectorate on this issue - employment agreements, decisions on the rights and obligations of employees, dismissal by the employee must be on paper, with handwritten signatures, with a required stamp on the employer's side. Therefore, it is necessary to recognize digitalization in business through modernization of the provisions of the Labour Law by enabling the adoption of all labour acts in the form of an electronic document, with the possibility of using an electronic signature, in accordance with the E-business Law.

- Along with the change in relevant provisions of the Labour 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 explicit 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. (1)

- We propose amendments to the Labour Law in the part regulating vocational training and development. This law should provide for appropriate modalities for the engagement of high school students, university students and other persons outside employment relationship (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. Additional conditions limiting the possibility of such engagement should be removed from the existing provisions on vocational training and development, 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. In this respect, in order to develop good and safe practice, it is necessary to harmonize and amend the provisions of the Labour Law so that they form a consistent labour regulation with the provisions of the Law on Dual Education and the Law on the Dual Model of Studies in Higher Education, which regulate the conditions of work practice for high school students and university students. (3)

- We propose that the amendments to the Labour Law clearly define what are the elements or conditions for determining the base salary and which general act of the employer determines those elements, as well as to determine the conditions for offering an annex agreeing to change the base stipulated salary. Also, we would suggest that the amendments to the Law clearly define whether in the offer for concluding an annex to the employment contract, in order to transfer to another suitable job, it is necessary to explain in detail the "needs of the process and organization of work" that led to the offer for conclusion annex to the contract, i.e. to define by the Law that a detailed explanation is not necessary if the needs of the process and organization of work are real, and if the offered jobs are appropriate and the employee is trained to work on the offered jobs. (2)

- Introduction of the possibility of editing the employment relationship during the establishment or during employment relationship to partially work outside the employer's premises (not only from home) as well as the possibility of changing the working regime during the employment relationship on a special basis for changing the agreed working conditions. 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 by introducing f.ex. "Primary place of work" for the case of work outside of employers' premises as well as to specify the mandatory item of the employment contract outside the employer's premises "Compensation of other labour costs and the manner of their determination" because legal certainty and security is necessary. 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. (3)

- It is necessary to: (a) 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), (b) in the event of the employment contract termination, extend the maximum duration of the notice period from 30 to 60 days (c) enable employers to issue decisions in the form of an electronic document determining measures (dismissal or milder measure) or releasing employees from liability, as well as delivery these decisions are executed electronically, (d) the employee's refusal to receive the decision served on the employer's premises as if the act had been delivered, (e) enable the employer to unilaterally release the employee from work during the notice period (when the notice period is prescribed/contracted) with the salary compensation payment in the amount of the employee's basic salary, (f) regulate the procedure of termination of employment due to technological, economic or organizational changes - redundancy, clearly stating the obligations of the employer or whether the employer is obliged to address a representative union within the company and the republic organization responsible for employment, whether he is obliged to take measures for new employment, etc. (2)

- For the purpose of keeping pace with trends, solutions and possibilities that the digitalization process entails, it is necessary to amend the Labour Law so as to define an alternative way of administration of rights and obligations arising from employment with the use of electronic documents (decisions' enactments and conclusion of contracts), alternative way of conducting formal communications between the employer and employees

electronically, primarily through e-mail or other similar electronic communication channels, and use of 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, explicitly enabling electronic records and use different IT tools for this purpose, and regulating the proper way of disposing of the hard copy employee records. (3)

LAW ON VOCATIONAL REHABILITATION AND EMPLOYMENT OF PERSONS WITH DISABILITIES

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.

COVID-19

Pursuant to the company's obligation to employ persons with disabilities, there is a challenge in practice that these persons may have the status of a particularly vulnerable category in relation to COVID-19 infection and the companies may find themselves in an extremely difficult situation to meet all necessary measures for employment of persons with disabilities.

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. (1)

- 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. (2)

- We believe that a more efficient manner for increasing the employment rate of PwD would be to incentivize employers with subsidies for their employment. (3)

EMPLOYMENT OF FOREIGN NATIONALS

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 pro-

fessionals 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. 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.

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. The work permit on the ground of type D visa is issued for a period of time of 180 days at most, and for its extension the foreign national must first obtain temporary residence permit. The Serbian employer may submit the request for the issuance of work permit for the foreign national, while the procedure for issuance of type D visa is still ongoing, which enables the foreign national to commence with work for the Serbian employer immediately after entering into the country. As of 1 December 2020, it will be possible to submit a single request for issuance/extension of the temporary residence and work permit, personally or electronically.

COVID-19

Measures of restrictions of movement and travel, as well as social distancing the countries implemented in order to protect the public health during the COVID-19 pandemic, have impact on the position of foreign nationals working in Serbia. Due to these measures, many foreign nationals could not leave the territory of Serbia, while conducting of the procedure concerning their status before the Serbian authorities became significantly more difficult.

The Government of the Republic of Serbia implemented measures concerning status matters of foreign nationals working in Serbia and adapted them to the new situation, as follows:

- Under the Conclusion of the Government on the Suspension of Work with Parties via Direct Contact dated 18 March 2020, the state administration bodies were obliged to suspend direct contact with parties and continue their work via written or electronical correspondence or via telephone, while the state of emergency is in force. In this regard, the Foreigners Department within the Ministry of Interior and the National Employment Service, introduced certain changes compared to previous manner of work. The Foreigners Department, apart from the fiction that their documents were valid during the state of emergency (see below), also enabled, for foreigners who needed to regulate their status during the state of emergency, to submit the signed request via post to the competent local police department, along with the required original copies of documents. According to the practice of the National Employment Service, the request for the issuance of work permit could have been submitted via post or electronically if the submitter has valid electronic certificate. During the state of emergency, the National Employment Service allowed the submitters of electronical request who did not have valid electronical certificate, to subsequently submit via post the signed original copy of the request, in which case the moment of submitting the electronical request is considered as the moment of submitting the request;

- By the Decision on the Status of Foreign Nationals During the State of Emergency dated 24 March 2020, it was prescribed that the foreign nationals who, on the day when the state of emergency was declared, were legally residing in Serbia, may legally remain in its territory while the state of emergency is in force. Also, it was stipulated that the personal documents of the foreign nationals which expired during the state of emergency, will be valid until the state of emergency is revoked;

- By the Decision on Validity of Work Permits Issued to the Foreign National During the State of Emergency dated 27 March 2020, the work permits which validity period expires during the state of emergency, will be considered valid while the state of emergency is in force. The deadline for submitting a request for their extension is 30 days from the day the state of emergency is revoked; and

- Based on the Decree on Measures for Prevention and Suppression of Infectious Disease COVID-19 dated 7 May 2020, the proceedings for determining the status of foreign nationals not initiated during the state of emergency, will be initiated within 30 days from the day the state of emergency is revoked, and until those proceedings end, it will be considered that the foreign nationals reside in Serbia legally.

POSITIVE DEVELOPMENTS

There were no new positive developments in the previous

period, comparing to the previous edition of the White Book.

REMAINING ISSUES

- The provisions of the Law on Employment of Foreigners 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 create problems in practice .
- 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.
- 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. Furthermore, it is still not possible to submit a request for issuance/extension of the approval for temporary residence electronically, even though, according to the latest amendments of the Law on Foreigners, it should have been possible from 1 January 2020.

FIC RECOMMENDATIONS

- 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; (2)
- The labour market test should be excluded in the case of hiring high-ranking managers; (2)
- In the procedure for issuance of temporary residence permit, it is necessary to shorten the duration of the procedure, reduce the number of the required documents, as well as to enact a relevant bylaw and commence with the implementation of the provision which enables to submit the request for issuance/extension of temporary residence electronically. (3)

SECONDMENT OF EMPLOYEES ABROAD

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 pursuant to a referral act or other appropriate basis; and (iii) work or professional training in the context of inter-company movement pursuant to an invitation letter, inter-company movement policy or other appropriate basis (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).

The Secondment Law does not apply to business trips abroad which last up to 30 days continuously or 90 days in total in course of a calendar year. The Ministry of Labour has issued an opinion which states that the

employer can assign its employees to business trips abroad irrespective of the above described limitations, if such business trip does not fall under one of the cases (i) – (iii) from the paragraph above (e.g., business trip abroad for the purpose of conducting negotiations with potential business partner and concluding a business cooperation agreement).

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.

COVID-19

Due to prevention of spread of the COVID-19, the states are imposing certain measures aimed to protect public health, as a result of which the secondment of employees to temporarily work abroad can be constrained by the public policy of control of entry to territory of a particular state. This restriction varies from state to state, it depends on the employee's citizenship and it is subject to changes from time to time depending on the epidemiological situation. Return of employees from temporary work abroad can also be constrained by the policy of control of entry to the Republic of Serbia, which varies depending on whether the employee is a Serbian or foreign citizen and which is subject to changes from time to time depending on the epidemiological situation in the Republic of Serbia.

In accordance with restrictions on international travel of passengers, the Republic of Serbia enacted the Decree on organisation of the work of the employers during the state of emergency, which obliged employers to postpone business trips abroad during the state of emergency having in mind a prohibition or restrictions on border crossing and/or movement, which is analogously applicable to the secondment of employees to temporarily work abroad.

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

Although the Secondment Law does not apply to business trips abroad which duration does not exceed 30 days continuously nor 90 days in total in course of a calendar year, in practice of large number of employers, this limitation has proved inadequate when it comes to managerial positions which require frequent business trips for the purpose of performing work for the employer abroad, since the employees who work at managerial positions are often required to be on business trip abroad more than 90 days in total in course of a calendar year.

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 training 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 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

- Extend the maximum period employees at managerial positions are allowed to stay abroad on the basis of assignment to business trip, without application of the Secondment Law to, up to 180 days in total, in course of a calendar year, instead of the currently applicable 90 days. (2)
- Allow secondment abroad for the purpose of vocational training also to entities which are not necessarily related to the employer by equity or control. (1)
- Allow the secondment abroad of employees under the age of 18. (1)

STAFF LEASING

CURRENT SITUATION

The Staff Leasing Act ("Official Gazette of the Republic of Serbia", no. 86/2019) ("Staff Leasing Act") entered into force on 1 January 2020, and became applicable on 1 March 2020. This is the first time that staff leasing and staff leasing agencies' work are regulated in Serbia. The Staff Leasing Act regulates the rights and obligations of leased employees employed at a staff leasing agency, equal treatment of leased employees regarding certain employment rights and rights arising from work, the conditions for temporary employment, the operation of the agencies, the conditions for staff leasing, the relationship between an agency and a beneficiary and the obligations of an agency and a beneficiary towards leased employees. However, the Staff Leasing Act created certain problems, such as those connected with the notion of comparative employee, the limitation of the number of leased employees who are employed for a fixed-term with an agency that a beneficiary can lease, and the presumption of staff leasing.

COVID-19

Considering that, in accordance with the Staff Leasing Act, the staff leasing agencies are formal employers of the leased employees, the agencies faced problems in relation to fiscal incentives and direct financial aid the state provided in order to mitigate the economic consequences of COVID-19 disease. As the condition for using fiscal incentives and direct financial aid was that an employer does not reduce the number of employees for more than 10% of its total worforce until 31 October 2020, the agencies could not avail themselves of this type of state aid. Namely, the agencies cannot commit not to reduce the number of employees as they cannot influence the employment policies of their clients. During COVID-19 pandemic the state failed to recognize that staff leasing, as an industry employing thousands of employees, was in need of support, as the business of staff leasing agencies was jeopardized just like many other businesses.

POSITIVE DEVELOPMENTS

The lawmakers adopted the last year's recommendation that staff leasing should be regulated by a separate law which would regulate all important issues in this area and be harmonized with accepted international standards (primarily ILO and EU documents), as well as with the legislation of the Republic of Serbia (Labour Act).

REMAINING ISSUES

The Staff Leasing Act prescribes that a beneficiary can engage leased employees who are on a fixed-term

employment contact with the staff leasing agency only if the number of such leased employees does not exceed 10% of the beneficiary's total workforce. This provision has many negative effects. Prior to the adoption of the Staff Leasing Act, one of the reasons for staff leasing was that there are industries in which the volume of workload is uncertain, i.e. there are sudden decreases and sudden increases of workload. In such industries, the beneficiary needs to engage leased employees for a fixed-term, during the increase of the workload, and during such times the number of the leased employees the beneficiary needs can easily exceed 10% of the beneficiary's total workforce. With the adoption of the Staff Leasing Act, this can no longer be done because it is not realistic that staff leasing agencies will employ people for indefinite-term in order to lease them to the beneficiaries for a fixed-term. This leads to an increase in the number of persons engaged on the basis of the agreement on temporary and periodical work (directly or through a youth cooperative). Workers engaged on this basis are less protected than leased employees under the Staff Leasing Act (persons engaged based on the agreement on temporary and periodical work are not guaranteed the same work conditions as comparative employees at the beneficiary). Reduced flexibility in engaging staff in Serbia certainly discourages potential and existing investors. Limiting the number of fixed-term employees that a beneficiary can lease from a staff leasing agency practically obviates the need for staff leasing agencies on the Serbian labor market.

The concept of a comparative employee from the Staff Leasing Act introduces legal uncertainty and potentially leads to the violation of the basic principles of the labor legislation. Namely, the Staff Leasing Act defines a comparative employee by developing the basic idea of the Directive 2008/104/EC (harmonization with the Directive 2008/104/EC was one of the goals when adopting the Staff Leasing Act). However, the Staff Leasing Act prescribes that, when there is no comparative employee at the beneficiary, the leased employee's basic salary cannot be less than the basic salary of the beneficiary's employees who have the same degree of professional qualification or same qualification level as the leased employee. This solution is not in the spirit of the Directive 2008/104/EC. In addition, a potential consequence of this solution is that leased employees and the beneficiary's employees, who have the same degree of professional qualification, would be entitled to the same basic salary even if their jobs are different (the complexity of the job, and responsibility are not taken into account). This is contrary to the equal pay for equal work principle.

The Staff Leasing Act introduces the presumption of staff leasing, according to which a person who does the work for the beneficiary or at the beneficiary's premises, but has an employment agreement or other engagement agreement with another employer, is considered a leased employee unless proven otherwise. The Staff Leasing Act, therefore, does not recognize situations in which a beneficiary and another employer have a business cooperation agreement, service agreement, construction agreement etc., on the basis of which the employees of another employer work for the beneficiary or at the beneficiary's premises. The possibility to rebut the presumption ("unless proven otherwise") does not offer sufficient legal certainty, i.e. it unnecessarily shifts the burden of proof to the beneficiary. Having in mind that the Staff Leasing Act defines staff leasing in detail, and determines who can be considered a leased employee, the staff leasing presumption is unnecessary, and can result in practice in unwarranted misdemeanor proceedings and expose the beneficiaries to unnecessary costs of overturning the statutory presumption.

FIC RECOMMENDATIONS

- We recommend deletion of Article 14 of the Staff Leasing Act, which limits the number of employees employed at the staff leasing agency on a fixed-term basis that a beneficiary can lease. (3)
- We recommend deletion of Article 2 paragraph 5 of the Staff Leasing Act, which regulates situations in which there is no comparative employee at the beneficiary. (3)
- We recommend deletion of Article 17 of the Staff Leasing Act, which prescribes the staff leasing presumption. (2)

HUMAN CAPITAL

CURRENT SITUATION

The state of the labour market has slightly changed in comparison to the previous year. The unemployment rate in Serbia at the end of the second quarter of 2020 is 7.3% according to the data of the Statistical Office of Serbia, which is a decrease against last year's by 2.4 (it was 9.7% at the end of 2019). 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 again registered in Vojvodina, which poses a great challenge to employers in terms of recruiting and selecting adequate staff.

The educational structure and the labour market indicate that finding candidates who meet the requirements of high-level, expert and strategic positions is still challenging. Also, finding candidates for lower positions is becoming more difficult due to various restrictions. The retention of high-skilled workers and development of own resources are still very popular trends, having in mind market conditions. Highly qualified people as well as people with lower education for basic positions are very difficult to recruit and retain since they are leaving the country trying to find better paid jobs abroad.

COVID-19

What has severely affected the labour market in Serbia, as well as in region and the whole world is COVID-19 pandemic. As of March 2020, the market has drastically changed - the economy is struggling to stay alive and due to state subsidies many companies did not conduct severe layoffs. Those companies that did not apply for the government subsidies started with layoffs - still the number of people who lost their jobs since the beginning of pandemic has not been determined and officially confirmed. It is extremely difficult to discover the real number of job losses - the numbers vary from 15.000 to 220.000 people and even more. Also the percentage of employees absent from work due to pandemic, home quarantine and isolation increased by 11.4% compared to the end of the first quarter of 2020. The same refers to people working from home, where the percentage increased by 12.1% Due to economic difficulties, more companies refused to receive the second round of state subsidies since their analysis shows that it is not financially justified. In the forthcoming period the situation in the labour market is expected to worsen, while the real statistics of the unemployment rate and the number of people that lost and will lose their jobs due to COVID-19 will continue to increase.

Taking the above into consideration, and despite the economic crisis that hit the whole world, the negotiation between the government and trade unions about the increase of minimum wage, continues. Even though nobody expects it to be increased, there is still a chance of its change.

POSITIVE DEVELOPMENTS

Unemployment rate was constantly dropping before COVID-19 situation and it seems that government was trying to support employment in all industries.

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.

With the current situation and the agreed and planned changes of Labour Law in 2021, there is great need of amendments to be done in various areas.

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. (1)
- Define the legal framework for the employer-student relation to simplify the implementation of vocational internships in parallel with regular education. (1)
- 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. (2)
- 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. (3)
- 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. (3)
- Due to COVID-19 situation and upcoming economic effects of it, consider to support employment through reducing employment costs regarding taxes and contributions. (2)

DUAL VOCATIONAL EDUCATION

CURRENT SITUATION

As of the 2019/2020 school year, the Law on Dual Education and the Law on Dual Model of Studies in Higher Education have been applied in Serbia, regulating the content and implementation of dual vocational education and dual higher education and mutual rights and obligations of all participants.

Pursuant to the Law on Dual Education:

- Mutual rights and obligations of employers and schools will be regulated by an agreement on dual education, to be concluded for a minimum period of three or four years.
- Mutual rights and obligations of employers and students will be regulated by an 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 side;
- 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, and for other reasons stipulated by the Law.
- 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 and to fulfil other conditions stipulated by the Law, 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.

- 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.

- On-the-job training at a company can be performed throughout the entire school year, up to six hours per day, i.e. up to 30 hours per week, but not in a period from 10 p.m. to 6 a.m. the next day.

- 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.

Pursuant to the Law on Dual Model of Studies in Higher Education:

- A higher education institution which wants to implement dual study programs shall form a network of employers who need to employ persons with appropriate qualifications, and the dual model of studies shall be implemented on the basis of an accredited study program in accordance with the law on higher education.

- Mutual rights and obligations of employer and higher education institution will be regulated by a dual model agreement, to be concluded for a period which cannot be shorter than the number of years of the study program.

- Mutual rights and obligations of employer and student will be regulated by an on-the-job training agreement to be concluded by the employer and the student.

- The Law prescribes conditions under which either party may terminate the dual model agreement or the on-the-job training agreement.

- The employer is obliged to provide an adequate number of mentors who have at least the type and level of higher education corresponding to the education that the student acquires according to the study program and three years of work experience, as well as to meet other requirements prescribed by the Law in terms of providing working conditions and material security of students (the same conditions required of employers in the vocational dual education).

- The employer will pay the student a monthly compensation for each hour of on-the-job training in the net amount of at least 50% of the basic salary of an employee working on the same or similar jobs (where such compensation can be paid in different amounts per years of study, in range from 30-70% of the basic salary of an employee working on the same or similar jobs, but the total compensation paid at the level of the study program must be at least 50% of the basic salary of the employee paid for the same period).

COVID-19

Competent Ministry has formed a team for organizing online classes in dual education.

If the epidemic continues, it is not clear how dual education at the employers' premises will be realized in the next school year, whether the special regulations adopted by the Government for employees shall apply to the students engaged by employers under this model as well and which will be the obligations of employers included in the dual education system.

POSITIVE DEVELOPMENTS

Compared to the previous situation, there have been no significant improvements in terms of the FIC recommendations.

Certain improvements are reflected in the amendments to the Law on Dual Education, by which certain provisions of the Law have been specified, but to a very limited extent.

REMAINING ISSUES

Given that the implementation of the Law on Dual Education and the Law on Dual Model of Studies in Higher Education has begun only in the school year 2019/2020, the effects of the implementation of these Laws and practical issues of the employers in implementation thereof remain to be seen in the future period.

It is necessary to determine more precisely how the laws on dual education are to apply in relation to the Labour Law, the Law on Occupational Health and Safety and other laws regulating different aspects of employment.

Although a will of the authorities to consider providing subsidies and tax breaks for the companies participating in the dual education system has been generally expressed, such incentives have not yet been prescribed.

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.

The Law on Dual Model of Studies in Higher Education stipulates that an obligatory element of the on-the-job training agreement shall be a damage compensation in the event of dismissal by the employer, unless the dismissal occurred without the fault of the employer. However, the Law does not specify cases in which it is considered that the dismissal occurred without the fault of the employer, which creates a problem of practical application of the mentioned provision. Further, the Law does not prescribe conditions under which the employer is obliged to compensate the damage to the student in case of dismissal, nor does it provide for a mutual obligation of student to compensate the damage to the employer, e.g. in case of retaking of the year at the studies or causing damage to the employer, so in this regard the only solution is to apply general rules on compensation of damages pursuant to the Law on Contracts and Torts.

FIC RECOMMENDATIONS

- By-laws should be adopted or authentic interpretations or opinions should be given to determine how the laws on dual education are to apply in relation to the Labour Law and other laws regulating different aspects of employment. (3)
- Incentives in form of subsidies or tax breaks that would attract companies in Serbia to join this system should be provided. (2)
- 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. (3)
- Obligation of a student to compensate the employer in case of retaking of the year or causing damage to the employer should be prescribed, as well as the right of an employer in such cases to terminate the on-the-job training agreement, in addition to the right to damage compensation. (3)
- If the COVID-19 epidemic continues in the next school year, the manner of realization of dual education and the obligations of employers in that sense should be prescribed. (2)