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 work from home, 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 structures, and the calculation of compensation for wages. Additional legislative provisions amendments are needed that regulate employment termination, such as those governing the statute of limitations and notice period, as well as a clear definition of the resolving redundancies procedure.

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. 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. Finally, the COVID-19 epidemic onset highlighted the problems related to insufficiently legally regulated work from home and employers' obligations in the field of safety and health at work.

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 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Labour Law				
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.	2008-2009			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2016			√
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.	2020			√
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.	2018			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2018			√
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.	2016			√
Law on Vocational Rehabilitation and Employment of Persons with Disabilities				
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.	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			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
We believe that a more efficient manner for increasing the employment rate of PwD would be to incentivize employers with subsidies for their employment.	2009			√
Employment of Foreign Nationals				
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			√
The labour market test should be excluded in the case of hiring high-ranking managers.	2015			√
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.	2009		√	
Secondment of employees abroad				
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.	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				
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.	2020			√
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	2020			√
We recommend deletion of Article 17 of the Staff Leasing Act, which prescribes the staff leasing presumption.	2020			√
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		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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 taking part in 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			√
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.	2019			√
Due to COVID-19 situation and upcoming economic effects of it, consider to support employment through reducing employment costs regarding taxes and contributions.	2020		√	

THE LABOUR LAW 1.00

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 the meantime, in the past six years, practice has shown that the Labour Law does not meet actual needs of employers and employees hence a significant number of provisions of the Labour Law impose burdensome administrative, organizational and financial structures in the employment relationship.

In particular, everyday life in the field of labour relations requires improvements or changes to the Labor Law that would enable:

- application of electronic document and electronic signature, in order to efficiently and flexibly administer documents from the employment relationship;
- flexible working conditions outside the employer's premises, in order to efficiently organize work and optimize labor costs;
- flexible conditions for engaging students in practice, in order to easily and legally secure the engagement of interns;
- more flexible and rational conditions for determining the length of annual leave;
- specifying the provisions governing amendments to the employment contract (annex), in order to ensure legal certainty;
- rational salary structure, in order to simplify the calculation and protect the employer from the high costs that arise when calculating salary compensation;
- more flexible conditions and procedures for dismissal and termination of employment contracts, in order to relieve the employer's administration.

Also, 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.

POSITIVE DEVELOPMENTS

There was no improvement in the previous year, bearing in mind that the Labor Law has not changed and the problems related to the implementation of the Labor Law are practically only recurring.

Improvements in the field of labor relations require amendments to the Labor Law, and it will also be necessary to reach full harmonization in the application of certain institutes through the views of the court and authentic interpretations.

In order to adopt 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 incomplete or unclear provisions of the Labour Law, or due to business requirements that are not yet regulated by the Labor Law.

REMAINING ISSUES

A significant number of provisions in the Labour Law burden the employment relationship in practice in terms of work organization, document administration and labor costs borne by the employer. Also, certain provisions of the Labour Law are open to interpretation and therefore lead to legal uncertainty in practice.

Some of the most significant current problems in the application of the existing provisions of the Labor Law have actually been transferred from previous years, and they are:

1. **Legal uncertainty regarding the impossibility/possibility of using an electronic signature and an electronic document.** The Labour Law does not explicitly prescribe whether an employment contract can be signed with an electronic signature, although such a possibility should exist, given that the electronic signature is regulated by the Law on Electronic Document, Electronic Identification and Trust Services in Electronic Business. On the other hand, the Labour Law does not prescribe the possibility of adopting general and individual acts in the form of an electronic document (except when it comes to the decision on annual leave), and in that part the Labour Law is inconsistent with the mentioned Law on Electronic Document. Everyday life in the field of labour relations requires the use of an electronic signature and an electronic document, in order to more efficiently administer labour documents, which we elaborate more in detail in point 10 down below. Therefore, it is necessary to amend the Labour Law by introducing an electronic signature and an electronic document as equal in relation to a handwritten signature and a paper document.

2. **Performing work outside the employer's premises.** The existing provisions of the Labor Law need to be amended to allow for flexible contracting of work outside the employer's premises and legal certainty regarding the reimbursement of costs related to work outside the employer's business premises. The provisions of the Labour Law should be amended to enable:

- Introduction of occasional work outside the employer's premises without the obligation to conclude an annex to the employment contract and on the basis of the conditions set out in the employer's general acts and through communication between the superior manager and the employee;
- Introduction of general principles for reimbursement of expenses incurred in connection with work outside the employer's premises. Namely, employers have doubts regarding the interpretation of the provision of the Law which prescribes that, in the case of work outside the employer's premises, the employment contract should stipulate the so-called compensation for other labor costs and the manner of their determination. The mentioned provision leaves a room for different interpretations regarding whether the employer is obliged to determine by a general act, i.e. to stipulate these costs by an employment contract, or the employment contract could provide for a free will of the parties to agree whether in a particular case there are any so-called other costs for the employee.

3. **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 should be legally secure, and which would include learning through practice. In the absence of an appropriate form of contract through which high school students and university students would be engaged, 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 in a certain manner allows it, although the intention of the legislator was not to engage high school students and university students through the mentioned form of contract.

4. **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.

5. **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.

6. **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.

7. **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. It is also demotivating that the employee has a higher income during the period of absence than during the period of work.

8. **Flexible work organization** – constantly evolving in practice and taking and increasingly important place in the development of companies and employee relations. However, for the time being the legal solutions do not fully follow this dynamism, so that provisions of the Labor Law regulating work outside employer's premises are incomplete and have contributed to the creation of challenges the employers meet in practice, but also to the unnecessary risks-taking by employers. These risks can be eliminated with more precise definition of the categories of such work – work from home and remote work, by relativizing the notion of the "work place" as obligatory element of the Employment Agreement, as well as by introducing general principles for the compensation of costs for work outside employers' premises. In order for work organization to be able to follow the need for quick transitions and changing circumstances of the new normality, it is necessary to amend Article 171 of the Labor Law in a way so that it prescribes that: (a) Annex to the Employment Agreement contracts changes in the contracted conditions of work, the subject of which would be transition to work regime outside employer's premises or vice versa, (b) Annex to the Employment Agreement is not concluded under conditions when the employees only occasionally work outside employer's premises, in line with Article 50, paragraph 2 of the Labor Law, where in such cases conditions of work outside employer's premises are determined by the employer's general enactments and are determined in agreement between line manager and employee. As concerns the work outside employer's premises, changes are necessary to the Law on Occupational Health and Safety, which would define obligations of not only the employer, but also employees for such type of work. Furthermore, irrespective of the type of employees' engagement, provisions which regulate overtime are rather restrictive and should be amended in a way so as to enable employers greater flexibility when deciding on introducing overtime and manner of compensating for overtime (through increased salary or days off). This is particularly important when we speak of employees at managerial positions.

9. **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. Above all, 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 the so-called individual redundancy (situation where there is no statutory requirement for adoption of redundancy program). Also, there are numerous doubts related to the redundancy program itself, and it is unclear whether the employer should first change the rulebook on job systematization or adopt a redundancy program. There are also some doubts regarding the application of measures for employment, especially the additional qualification and retraining. 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.

10. **Digitalization in labour regulations** – With a view to efficient and flexible administration of labor-legal documents, it is necessary to explicitly define in the Labor Law the equality of the use of electronic documents and electronic signature. Article 7 of the Law on Electronic Documents, Electronic Identification and Trust Services in Electronic Business, prescribes that electronic form is one of the forms of written format, whereby the electronic form is fully equalized with traditional written form, which implies paper shape. On the other hand, the Labor Law did not explicitly envisage the electronic form of documents and electronic signature and in the practice so far, the Labor Law was applied in such a way that the Employment Agreement is concluded in written form, with personal signature of the authorized person of the employer and the employee. Identical is the situation with general labor-legal documents and general solutions, which determine employees' rights and obligations. The present Labor Law, in its Article 75, paragraph 6, prescribes that decisions on the use of annual vacations, can be sent to the employee in electronic form, but that, at the employee's request, the decision must be also supplied in written form. Also, the problem is rigid attitude of the Labor Inspectorate on this question – Employment Agreements, decisions on employees' rights and obligations, notice of dismissal by the employee, have to be in paper form, personally signed, while the employers are still required to provide a stamp, although under the Company Law, the stamp is no longer obligatory. Therefore, digitalization in business operations has to be recognized through modernization of the Labor Law provisions which will equitably make it possible:

- to adopt all labor-legal documents (Employment Agreements, Rules of Procedure and other general enactments, individual decisions on the use of annual vacation, leaves, dismissal from work, pay slips and other documents) in a form of electronic document, with a possibility of using electronic signature, in accordance with the Law on Electronic Documents, Electronic Identification and Trust Services in Electronic Business.

- Electronic communication between the employer and employees (posting general and individual labor-legal documents on internal employer's online platforms and/or by e-mail correspondence, sending information and documents in electronic way);

- Administration of annual vacations through the electronic system of annual vacation recording, on online platforms and abandoning administratively burdening system of issuing annual vacation decisions.

With the change of relevant provisions of the Labor Law, we consider it necessary to also change the Law on Records in the Labor Field and carry out adjustment of the obsolete regulation with modern digitalization processes, by introducing an explicit possibility for safekeeping documents in electronic form, while also adjusting deadlines for documents safekeeping. If more work would be done on digitalization, the positive effect on business would be manifold, primarily through the promotion of efficiency of business operations, costs savings, but also important ecological effects (minimum use of paper).

FIC RECOMMENDATIONS

- **Digitization of labor law documents.** In order to harmonize with the trends, solutions and possibilities brought by the digitalization process, it is necessary to amend the Labour Law in order to define an alternative way of administering employment rights and obligations by using electronic documents and electronic signature (adoption of acts and concluding contracts), alternative formal communication on the relation employer - employee electronically, primarily via e-mail or other similar channels of electronic communication and with the use of electronic bulletin board, electronic records as well as submission of documentation electronically, etc., as ways and forms that would be completely equal to the currently valid forms. Also, we believe that it is necessary to amend the Law on Labour Records in relation to 3 key items: determining the maximum retention period up to 5 years after termination of employment, explicitly enabling electronic records and using various IT tools for this purpose, and prescribing the correct way disposal of employee files made in paper form.

- **Flexible conditions of work outside employer's premises.** Introduction of a possibility of regulating employment when establishing it or in its course so that the employee would work one part of his working time outside the employer's premises (not only from home), as well as a possibility of changing the work regime and concluding and Annex to the Employment Agreement during employment, i.e. without the obligation to conclude the Annex (in case when the transition to work regime outside employer's premises is occasional or short-term, in which case employer's provisions of general enactments would directly apply to conditions of work from home). It is necessary to precisely establish the difference between the work from home and remote work (by the place of work or means of work), and relativize the need to define "Place of work" as obligatory element of Employment Agreement by introducing, for example, "primary place of work" in case of remote work, as well as introduce general principles for the compensation of costs for work outside employer's premises, since legal certainty and security are required. Within the flexible organization of work, possibility of introducing overtime should be expanded so that it is not linked only to extraordinary and unexpected circumstances. The employer and employee should have the freedom to agree on the reason for and purpose of overtime, and the employers should be entitled to contract a manager's fee that would also cover overtime fee for the overtime work of company managers.

- **Rational salary structure and salary compensation.** We suggest that work performance be envisaged only as an option, and not as a mandatory part of earnings. Also, the proposal is that the basis for calculating the salary compensation during the absence from work be equal to the basic salary increased by the seniority pay. This would make it much easier for all employers to manage salaries and have more flexibility in both the salary contracting and the budget planning, and the salary structure itself would be more understandable. Also, we propose that the amendments to the Labour Law clearly define what the elements or conditions for determining the basic salary are and which general act of the employer determines those elements, as well as to determine the conditions for offering an annex which stipulates a change the basic agreed salary.

- **Flexible engagement of students in practice.** We propose amendments to the Labour Law in the part that regulates professional training and development. These amendments should provide for appropriate flexible modalities of engaging high school students, students and other persons outside employment (both in the field of education and outside the field of education) in order to gain practical knowledge and experience in a real work environment, career advancement and easier future employment. Additional conditions limiting the possibility of such engagement should be removed from the existing provisions on vocational training and development, and the same should be provided regardless of the employer's activity and whether it is the public or private sector. The competent ministry may establish all necessary mechanisms to prevent abuse of this institute, if this was the reason for the introduction of restrictions by Article 201. In this regard, in order to develop good and safe practice, it is necessary to harmonize the

provisions of the Labour Law so that they form a consistent labour law 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 of high school students and university students.

- **More flexible conditions and procedures for employment termination.** 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 in cases when program is not mandatory, 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 apply measures for new employment and how they are being applied, especially additional qualification and retraining, etc.

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. Having in mind the COVID-19 pandemic, 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.
- 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 regulated by the Employment of Foreigners Act from 2014 and the Foreigners Act from 2018. Last amendments of both entered into force in May 2019.

The employment (based on an employment agreement and on another ground) and self-employment of foreigners in Serbia is subject to obtaining a work permit, except in cases specifically listed in the Employment of Foreigners Act.

The Employment of Foreigners Act envisages two types of permits to work: (i) personal work permit, enabling foreigners who have a permanent residence permit, as well as refugees and other special categories of foreigners, to work, be self-employed, and exercise unemployment rights in

Serbia; and (ii) work permit which can be: for employment, for self-employment, and for special cases of employment (seconded staff, movement within the company, independent professionals and vocational training and development). A personal work permit is issued at the foreigner's request, while a work permit (except for the work permit for self-employment) is granted at the employer's request. Necessary documentation and conditions for issuance of the work permit is different for each type of work permit. Work permit is issued by the National Employment Service ("NES").

A foreign national who seeks employment in Serbia may be granted only one type of permit to work at a time, and s/he may only perform the jobs for which s/he was given the work permit. A requirement for obtaining a work permit is a temporary residence permit, or visa for longer stay issued on the ground of employment ("Visa D"). A work permit is issued for the period of validity of the temporary residence permit/Visa D. The work permit based on Visa D is issued for 180 days at most, and for its extension, the foreigner must first obtain temporary residence permit. The Serbian employer may submit the application for work permit for the foreigner, while the procedure for issuance of Visa D is still ongoing, which enables the foreigner to commence with work in Serbia immediately after entering the country. As of 1 December 2020, it is possible to personally submit a single application for issuance/extension of temporary residence permit and work permit. Visa D is issued by the Serbian diplomatic-consular authority in the country of the foreigner's residence or another foreign country that has a Serbian diplomatic - consular mission whereas temporary residence permit is issued by the Foreigners' Office within the Ministry of Interior.

POSITIVE DEVELOPMENTS

During the previous period, the procedures for applying for the permits which regulate foreigners' status in Serbia have been significantly simplified. Namely, the Rulebook on the joint application for issuance or extension of temporary residence permit and work permit ("Official Gazette of RS", no. 144/2020) ("Rulebook"), adopted in November 2020, introduced the possibility of submitting joint application for issuance/extension of temporary residence permit and work permit ("Joint Application"), as envisaged by Article 41a of the Foreigners Act.

As of 1 December 2020, foreigner can submit the Joint Application at the relevant police station. Documents required for the issuance/extension of temporary residence should be submitted together with this application. After determining that the conditions for granting temporary residence are met, the Foreigners' Office forwards the application to the NES to determine whether the conditions for granting work permit are met. Thereafter, the foreigner or the employer, depending on the type of work permit, submits to the NES the required documentation necessary to determine whether the conditions for the issuance of work permit are fulfilled. This documentation can be submitted by e-mail, regular mail, or in person at the NES' headquarters. If the NES establishes that the conditions are met, each authority issues a separate permit. The content of the Joint Application and the submission procedure are prescribed by the Rulebook.

As a further simplification of the procedure, as of 1 April 2021, it is possible to submit an application for temporary residence permit electronically, using the e-Government portal. When temporary residence permit is granted, the Foreigners' Office will notify the foreigner electronically of the date and the location in Serbia where s/he can collect the permit in person. This enables foreigners to apply for temporary residence permit even before arriving to Serbia.

REMAINING ISSUES

According to the provisions of the Employment of Foreigners Act, a work permit for employment will only be issued if the employer had not dismissed employees as redundant within the period of three months prior to the filing the application for work permit for employment. This is confirmed by a certificate issued by the Central Registry of Mandatory Social Insurance. However, in practice, the Central Registry of Mandatory Social Insurance does not monitor redundancies as per the specific work post but can only issue a certificate if no redundancies occurred in the company within the relevant period, irrespective of the specific work post. For that reason, the employer must submit, along with such certificate, a statement that no employee has been declared and dismissed as redundant from the specific work post for which a work permit is requested;

A labour market test is still required for every work permit for employment, including when senior management is employed, which is is impractical, in particular when it comes to hiring senior management;

The one-year maximum period of validity of residence and work permits is too short, especially taking into account

that according to the Employment of Foreigners Act, a work permit may be issued on the basis of an approved temporary residence, which obliges the foreigner to start the complicated and lengthy procedure for extension of residence permit much before its expiration. . Also, although Article 41a of the Foreigners Act stipulates that Joint Application may be submitted electronically or in person, in practice, it is still not possible to submit this application electronically.

FIC RECOMMENDATIONS

- The Central Registry of Mandatory Social Insurance's certificate on whether an employer, prior to filing an application for a work permit for employment, had dismissed employees as redundant should contain the exact job title of the employee who was declared redundant.
- The labour market test should not be a condition for issuing a work permit in case of hiring senior managers.
- It is necessary to shorten the duration of the procedure for issuance of temporary residence permit, allow a longer validity of temporary residence permit and work permit, and reduce the number of the required documents. Also, it is necessary to provide the possibility to submit the Joint Application electronically in accordance with Article 41a of the Foreigners' Act.

SECONDMENT OF EMPLOYEES ABROAD 1.00

CURRENT SITUATION

The Act on Conditions for Secondment of Employees to Temporary Work Abroad and their Protection ("Secondment Act") has been in effect since 13 January 2016, regulating secondment of employees abroad by a Serbian employer for the purpose of temporary work or vocational training and development abroad. The Secondment Act 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 and development at the employer's business units established abroad, pursuant to a secondment enactment or another appropriate basis; and (iii) work or professional training and development in the context of intra-company movement pursuant to an invitation letter, intra-company movement policy or another appropriate basis (which includes secondment to a foreign employer that has a significant equity 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 the control of a third foreign company).

The Secondment Act does not apply to business trips abroad which last for up to 30 days continuously or up to 90 days with interruptions within a calendar year. The Ministry of Labour has issued an opinion which states that the employer can refer its employees to business trips abroad irrespective of the said limitations, if such business trips do not fall under one of the cases (i) – (iii) from the previous paragraph (e.g. business trip abroad for the purpose of negotiations with a 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 must conclude an annex to the employment agreement regulating the terms of secondment abroad (the mandatory elements of the annex are prescribed by

the Secondment Act). The employee must be employed at the employer which is seconding the employee for at least three months prior to secondment (except in case secondment assumes work which falls within the employer's core 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, the exception also applies 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 abroad for justified reasons prescribed by the Secondment Act (e.g. during pregnancy). The initial duration of secondment is limited to 12 months, with the possibility of extension. In case of secondment of fixed-term employees, the duration of secondment may not exceed the term of their employment, and the time spent on secondment does not count toward the maximum statutory duration of fixed-term employment.

The employer must register the change of the seconded employee's social insurance ground in the Central Registry of Mandatory Social Insurance, and state the host country, as well as any subsequent change of the host country.

POSITIVE DEVELOPMENTS

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

REMAINING ISSUES

Although the Secondment Act provisions do not apply to business trips abroad the duration of which does not exceed 30 days continuously or 90 days in total within a calendar year, in practice of a large number of employers, this limitation is 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 for more than 90 days in total within a calendar year.

Limiting secondment abroad for the purpose of vocational training and development only to the employer's business units abroad, and only to a group of entities affiliated with the employer based on equity or control, has been disputed in practice. By not allowing secondment for the purpose of vocational training and development at the companies abroad that are not related to the domestic employer based on equity or control, but on some other basis (e.g. contractual relationship), the movement of employees seeking training and development abroad is an unnecessary constraint.

The Secondment Act prohibits secondment abroad of employees under the age of 18 (unless another statute regulates otherwise). This limitation is unnecessary, having in mind that secondment for the purpose of vocational training and development can be useful for employees between the age of 15 (the statutory condition for establishing employment) and 18.

FIC RECOMMENDATIONS

- We recommend extension of the maximum period employees at managerial positions are allowed to stay abroad on the basis of referral to business trip, without application of the Secondment Act to up to 180 days in total within a calendar year, instead of the currently applicable 90 days.
- We recommend allowing secondment abroad for the purpose of vocational training and development also to the entities which are not necessarily related to the employer by equity or control.
- We recommend allowing secondment abroad of employees under the age of 18.

STAFF LEASING 1.00

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.

POSITIVE DEVELOPMENTS

The lawmakers adopted the previous 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 Law).

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.
- 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.
- We recommend deletion of Article 17 of the Staff Leasing Act, which prescribes the staff leasing presumption.

HUMAN CAPITAL 1.33

CURRENT SITUATION

The state of the labour market in comparison to the previous year is pretty dependable on epidemiological situation which is challenging for some industries in particular. 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.

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 are mainly go through restructuring and optimization of resources.

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.

The epidemiological situation has caused changes in the organization of work and caused the aspirations of employees and employers to maintain efficiency in a challenging environment through the adjustment of work processes, in such a way that the organization of work from home is one of the most interesting topics in companies.

Finally, despite the economic crisis that has hit the whole world, the minimum price of labor will be increased this year as well as the previous ones.

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 2022, 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.
- 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.
- Due to COVID-19 situation and upcoming economic effects of it, consider to support employment through reducing employment costs regarding taxes and contributions and thoroughly regulate legislation that's considerers work from home.

SAFETY AND HEALTH AT WORK

CURRENT SITUATION

The outbreak of the infectious disease COVID-19 in March 2020 is the reason for opening certain topics on which the Foreign Investors Council in previous years pointed to the Ministry of Labour, Employment, Veterans and Social Affairs and the Directorate for Safety and Health at Work, and certainly one of those would be work from home and the need to regulate work from home through relevant laws. One of the main reasons why work from home has become so relevant at the time of the outbreak of the infectious disease COVID-19 is the extent to which it is used, all because work from home is perceived as practically the most effective measure to prevent the spread of this infectious disease, at least on workplace.

The current Law on Safety and Health at Work ("Official Gazette of the RS", No. 101/2005, 91/2015 and 113/2017 - other law), but also the draft of the new Law do not contain provisions that specifically regulate issues related to safety and health at work of employees when working from home, nor working remotely. According to the above, the conspicuous legal gap and the risks that employers need to take in order to enable work from home for their employees, with the epidemic of the infectious disease COVID-19, have become even more noticeable.

The rights of employees and employers, obligations and responsibilities of employers and employees when working from home and all actions related to it, these are all issues that should be regulated by the law on safety and health at work because we believe that it is not entirely possible to apply general principles and provisions on different models of work engagement. Finally, regulating this topic by law would lead to the exclusion or at least reduction of the risks that employers take in order to protect employees and business in general.

POSITIVE DEVELOPMENTS

During January 2021, the Directorate for Safety and Health at Work developed and published a Guide to Safe and Healthy Work from Home, with the aim of making it easier for employers and employees to work in a situation caused by the COVID-19 epidemic. Clearly, the great effort that has been made to address this extremely complex topic (from the point of view of labor relations, safety and health at work, psychological and sociological aspect, perspectives of corporate governance, etc.) to a certain extent.

The Guide for Safe and Healthy Work from Home identified the obligations of employers on the topic of safety and health at work which represent the duty of the employer, and also identified guidelines, recommendations and other suggestions for employers. In relation to the employee-employer relationship, we consider the adopted practice (checklist, self-assessment, etc.) and the proclaimed principle of "cooperation" between employees and the employer to be a positive development. The Foreign Investors Council believes that the views of labour inspectors are in line with the views set out in the Guide for Safe and Healthy Work from Home, as well as that legal security and certainty, at least in that part, would not be lacking.

However, the Guide for Safe and Healthy Work from Home, unfortunately, cannot fill the legal gap that exists in relation to work from home in the current regulations of the Republic of Serbia, and for that reason we believe that regulating this topic through law has no alternative.

REMAINING ISSUES

Legal underregulating. At the moment, working conditions from home or remotely are not regulated by law and bylaws. On the other hand, it is uncertain whether the current draft amendments to the Law on Safety and Health at Work would include defining the workplace and working environment for work at home or remotely, defining an injury at work while working from home or remotely, mutual rights and obligations of the employer and employees, as well as conditions for safe and healthy work from home / remote work. In the absence of legal norms, there are no bylaws that would be necessary to regulate more in detail: procedures related to the implementation of preventive measures for safe work from home / remote work; minimum conditions for ergonomic work from home; training of employees for safe work from home / remotely; rules of communication between employees and their managers in working conditions outside the employer's premises; procedure related to injury at work and filling in the injury check-list, in case of injury while working at home or at another location; the procedure for drafting an act on risk assessment for work performed from home or remotely.

Legal uncertainty. The absence of laws and bylaws further leads to legal uncertainty, because employers, even

with the professional support of licensed companies for safety and health at work, do not have enough professional knowledge and previous practice to regulate all the above issues by general acts. Even employers would have professional knowledge and experience in practice, regulating these issues by a general act of the employer would lead to diversity and inconsistency in terms of definitions and in terms of mutual rights and obligations of employer and employees, as well as in terms of the procedures.

Risks related to the control of safe work from home or remote work. In the absence of laws and regulations, the question is raised as to how employers could ensure safety and health at work in the premises where the employee resides and works, since that would be a place of work that is not under the direct control of the employer. Risks of legal uncertainty are especially open in cases when employees would perform jobs outside the territory of Serbia.

Risks related to injuries at work when working from home or at a distance. The Rulebook on the content and manner of issuing the form of the report on injuries at work and occupational diseases ("Official Gazette of RS", No. 72/06, 84/06 - correction, 4/16, 106/18 and 14/19) does not prescribe a code for work from home, and also the existing form of the report on injury at work cannot be applied in the conditions of injury during the work at home i.e. remotely. Also, there is a risk related to the correct determination of the causes and manner of injuring at work when working from home or remotely, given that in that case it would be necessary to provide for the constitutional right to inviolability of the apartment. On the other hand, in regular circumstances when the employee works in the business premises, the employer performs a physical inspection at the location where the injury occurred. Physical insight into the location of the injury is almost necessary in order to correctly determine the cause and manner of the injuring hence this issue opens a challenge for the legislator in relation to finding possible solutions. Also, we believe that the "workplace" in working conditions at home does not include only the work space in the employee's home where the employee performs the contracted work, but also includes the kitchen, dining room and bathroom / toilet.

FIC RECOMMENDATIONS

Adoption of laws and bylaws. In the absence of legal norms, there are no bylaws that would be necessary to regulate in more detail:

- procedures related to the implementation of preventive measures for safe work from home / remote work, control mechanisms for the application of measures for safe and healthy work and mechanisms for determining the causes and manner of injuring when working from home, i.e. remotely (here we primarily refer to the preventive measures related to: ergonomics of work, lighting of the working space, microclimate in the working space, passability, stress management, maintenance of work space, electrical installations, fire protection, prohibited activities and behavior, and the actions of the employee in case of injury at work),
- training of employees for safe work from home / remotely,
- procedure related to injury at work while working at home /remotely and filling in the injury list in case of injury while working at home or at another location,
- clear division of rights, obligations and responsibilities between the employer and the employee, in connection with the application of measures for safe work from home or remote work, as well as in case of injury at work or the occurrence of occupational diseases,
- the procedure for drafting the act on risk assessment for the jobs that are performed from home or remotely. We believe that the kitchen / dining room and bathroom / toilet in the employee's home should be included in the risk assessment, because these are premises that regularly exist in the employer's business premises and that the employee regularly uses them during working hours, hence those premises should also be subject to the risk assessment and measures for prevention / minimization of injuries at work in the circumstances of work from home / remotely.