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 human resources field was inevitably affected by the Russian-Ukrainian crisis in 2022. Many Ukrainian citizens were forced to emigrate to other countries, and the need for relocation did not escape Russian citizens either, bearing in mind that the business of many companies in Russia became difficult, due to the introduced series of sanctions packages.

Therefore, it is not surprising that the field of information technology was one of the first to adapt to the new circumstances, which led to the establishment of a large number of new IT companies in Serbia and the consequent relocation of businesses and employees to the territory of Serbia. HR managers took first strike of these changes and had to master the immigration procedures almost overnight and organize the often massive procedures of obtaining work permits and temporary residence permits for newly settled foreigners in Serbia.

Various ways were introduced to speed up the foreigner's employment procedures before the current global political crisis, but when some of the new solutions were tested, it turned out that they did not work in all cases. Namely, electronic submission of documents for temporary residence is not practical for situations of mass relocations because it implies that each individual creates an account on eUprava and submits a request for himself, including payment of administrative fees. Bearing in mind the competitiveness in the IT industry and the efforts of employers to attract and retain quality staff, they strove for a simpler and faster procedure, which could be done with as little involvement of the employees themselves as possible. Therefore, the current mechanisms of submitting documents in the procedure of obtaining temporary residence, in which the employer and his representatives cannot mediate (that is, they have limited mediating possibilities), turned out to be inappropriate in the given circumstances. On the other hand, the combined request for temporary residence and work permit showed that communication and cooperation between the Ministry of Interior and the National Employment Service could be improved.

It was noted that the competent authorities recognized the situation complexity and tried to do what was possible in order to speed it up and make it more flexible and simpler under the given circumstances. This change has led to the acceleration of the process of exercising the employees rights, and the question is justifiably raised as to whether certain changes could remain permanent.

Finally, labor law regulations branching and the absence of a single umbrella law that would regulate relevant issues in the domain of labor law in a unique and harmonized manner also represented a stumbling block when it comes to relocating business to Serbia. The number of mandatory documents that the employer is obliged to adopt, as well as the rigidity of certain labor law institutes, have proven to be quite a burden for foreign employers.

In this context, it is also important to note the non-compliance of the practice with the applicable laws, which in the newly created situation was particularly noticeable in the case of the impossibility of timely registration of foreign employees on the CROSO portal within three days from the day of issuing the work permit (that is, the employee starting work), considering that the issued work permits are still sent to the employer's address by mail, and as a rule they reach the employer only after the deadline specified

by law. This further conditioned the procedure for determining the nature of the insured, which slows down the registration process. Additionally, the lack of possibility to send work permits electronically to the employer has led to employee dissatisfaction, since employers cannot pay wages (as well as any other income that has the character of wages) before issuing work permits.

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 1,06

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Labour Law				
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.	2016			√
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.	2018			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2021			√
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.	2016			√
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 consider 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.	2018			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Law on Vocational Rehabilitation and Employment of Persons with Disabilities				
Because the regulations listed herein are considered particularly important and vital for attracting and maintaining foreign investments, and given that the very purpose of this Law is the inclusion of PwD, the FIC previously provided and is still putting forth a number of suggestions on how to improve the situation. To this end, here we underline the most important recommendations on how to improve the existing legal framework and practice:				
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			√
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 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.	2015			√
The labour market test should not be a condition for issuing a work permit in case of hiring senior managers.	2015			√
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.	2021			√
Secondment of employees abroad				
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.	2016			√
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.	2018			√
We recommend allowing secondment abroad of employees under the age of 18.	2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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			√
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 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.	2021		√	
Safety and health at work				
Adoption of laws and bylaws. In the absence of legal norms, there are no bylaws that would be necessary to regulate in more detail:				
Training of employees for safe work from home / remotely,	2021			√
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,	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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),	2021			√
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,	2021			√
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.	2021			√
Dual education				
By-laws should be adopted to determine how the Law on dual Education is to apply in relation to the Labour Law, the Law on Occupational Health and Safety, and the Law on the Prevention of Workplace Harassment and other laws regulating different aspects of employment.	2018		√	
A sustainable dual education funding model and possible incentives to attract companies in Serbia to join this system should be defined.	2016			√
Provisions on payment of students by the employer should be regulated in more detail, especially in terms of evaluating the performance of the engaged students and the possibility of introducing a performance-based compensation system.	2017			√

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 or-

der 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 practically only increase.

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, even though a big step was made in digitalization public administration and providing electronic services in Serbia. 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 strictly 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 or to simply provide employees more vacation days than the legal minimum, without applying any criteria.

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 con-

cerns 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. This issue is particularly highlighted since several judgments of the Supreme Court of Cassation were published during the previous year, which interpret the redundancy procedure and the sequence of the mentioned actions in different ways, precisely due to the aforementioned gaps in the Labour Law, which increases the legal uncertainty in the application of this law. 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. In addition to the above, it often happens that the employee simply stops coming to work (without first regulating their professional status with the employer), because they started working for another employer, with whom he is registered for insurance. Reality requires the introduction of the possibility that, in the case when an employee establishes an employment relationship with another employer without giving written notice to the employer, it is considered that the employee has canceled the employment contract, and that in those cases the first employer is not obliged to implement the procedure for unilateral cancellation of the contract of work due to violation of work obligations and non-observance of work discipline.

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.

  Alternatively, a good way to regulate the employment of students could be the Work Practice Law. However, the draft of this law that was on public discussion had flawed solutions based on which practitioners can perform work practice for a certain period after schooling, for work in a profession within the acquired level of qualifications, which leaves room for the interpretation that work practice within of the aforementioned law, students cannot work for the occupation for which higher education is provided (since at that moment they have acquired secondary education). It remains to be seen what the final solution of the future law will be and whether it will represent an adequate basis for the employment of 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 consider 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. (g) the Labor Law to define that the establishment of an employment relationship with another employer who submitted the employee's application for insurance, without prior written notice to the original employer, is considered a termination of the employment contract by the employee, and that with the first day when he did not show up for work at the employer .

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]. Since the beginning of the COVID 19 epidemic, this procedure is even slower and more complicated, especially for employees.

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. This procedure for acquiring the status of PwD is the biggest challenge in this area.
- 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 1.00

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 or another type of agreement for work outside employment relationship) 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 self-employment) is granted at the employer's request. Necessary documentation and conditions for issuance depend on the 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 work permit at a time, and s/he may only perform the jobs for which s/he was given the 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. It is also possible to personally submit a single application for issuance/extension of temporary residence permit and work permit ("Joint Application"), as well as to submit an application for temporary residence permit electronically, using the e-government portal. 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

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

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 Security Insurance. However, in practice, the Central Registry of Mandatory Social Security 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 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.
- The Ministry of Interior approves the temporary residence retroactively, with the validity from the date of submission of the request. This affects the duration of work permit and employment agreement.

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.
- Temporary residence permit, once granted, should be valid from the date of granting and not from the date of submission of the request, given that the applicant does not control the length of the approval process and is, if at all, in Serbia pending the approval on another legal basis and not on the basis of requested temporary residence permit.

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 or another adequate basis; (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. In 2016, the Ministry of Labour 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 the amendments to employment agreement regulating the terms of secondment abroad (the mandatory elements 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 security insurance ground in the Central Registry of Mandatory Social Security 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

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

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 compara-

tive 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 1.17

CURRENT SITUATION

The state of the labour market is becoming more and more challenging as several factors such as the Covid epidemic and the latest developments in the world have made the already existing challenges even more apostrophized. 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 unemployment rate in the entire country in the first quarter of 2022 is around 10.6%, while employers have increasing challenges to find, attract and retain the workforce, especially quality candidates.

The consequences of the pandemic are still present, and changed the standpoint of both Employers and candidates and established new trends and new challenges with remote working, the outflow of personnel and the partial and short-term return of people to the country without the intention of permanent or longer stay in the country.

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 work-

ers 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 emerging political crises so 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, 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 ministries 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.
- 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 1.00

CURRENT SITUATION

The outbreak of the infectious disease COVID-19 in March 2020 is the reason for opening certain topics on which the Council of Foreign Investors 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 became so relevant at the time of the outbreak of the infectious disease COVID-19 is the extent to which it was used, having in mind that was perceived as practically the most effective measure to prevent the spread of this infectious disease on workplace. The IT industry should be highlighted, in which the practice of working from home has gained momentum, since the basic conditions for work are met by providing the employee with a computer and other relevant equipment.

The current Law on Safety and Health at Work ("Official Gazette of the RS", No. 101/2005, 91/2015 and 113/2017 - other law), does not contain provisions that specifically regulate issues related to safety and health at work of employees when working from home, nor working remotely, although in professional circles, this topic is emerging as a significant part of the future draft of the Law. 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, obligations and responsibilities of employees and employers, when working from home and all actions related to it, 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, which begun with Draft Law on Safety and Health at Work.

IMPROVEMENTS

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.

Finally, it is significant that the current version of the Draft Law on Safety and Health at Work still recognizes work from home and remote work, but we believe that there is still room for improvement.

REMAINING ISSUES

Legal underregulating. At the moment, working conditions from home or remotely are not regulated sufficiently by law and bylaws. On the other hand, it is uncertain whether and in which way 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, conditions for safe and healthy work from home / remote work, as well as way of regulating work from home on the employer-employee relation. In the absence of legal norms, there are no bylaws that would be necessary to regulate more in detail commitments of the as well as the precise duties and responsibilities of the Occupational Safety and Health Officer: procedures related to the implementation of preventive measures for safe work from home / remote work; minimum conditions for ergonomic work from home; trainings 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 if 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 i.e. 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. That is why this issue opens a challenge for the legislator in relation to finding possible solutions in case of injuries during working from home or remotely. Also, we believe that it is necessary to make clear statement if the "workplace" in working conditions at home does 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, adequate equipment, 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, and digitalization of complete working process of trainings and administration regarding work from home
- 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, as well as as well as the precise duties and responsibilities of the Occupational Safety and Health Officer with a special focus on communication, keeping documentation and controlling the application of measures for safe and healthy work,
- the procedure for drafting the act on risk assessment for the jobs that are performed from home or remotely and clear specification if 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.

DUAL EDUCATION 1.33

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.

- For 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
- 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 based on 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 employer shall provide an adequate number of mentors who have at least the type and level of higher education corresponding to the education that the student shall acquire according to the study program and three years of professional work experience.
- 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).

IMPROVEMENTS

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.

The provisions of the Law on Dual Education were also further specified by the adoption of certain by-laws that more closely define only specific segments thereof (establishment and work of the committee for the implementation of dual education, for example), but again in a limited scope.

REMAINING ISSUES

The implementation of the Law on Dual Education and the Law on the Dual Study Model in Higher Education began in the school year of 2019/2020. Considering the period over which the provisions of these Laws have been applicable, their effects are becoming visible, but not yet fully. We can expect the entire prospective clearly displaying effects and potential problems which occur in practice to be available in the upcoming period

In order for dual education to be fully implemented, primarily as an educational element unifying the theory and practice which profiles pupils and students for a more comprehensive inclusion in modern trends, and as such to lead the alignment of the education system with the needs of the labour market, a clear and precise formal legal framework is required which shall determine in more detail the relation of the Law on dual education to the Labour Law, the Law on Occupational Health and Safety, as well as other laws that regulate various aspects of employment.

Furthermore, the issue is raised on defining the aspects of detail implementation of dual education, in reference to certain areas of business or specific industries where dual education is implemented and taking into consideration the particulars of specific industries.

Although, in principle, the relevant authorities expressed their willingness to consider providing subsidies and tax allowances for companies participating in the dual model of education, since the employers have the obligation of constant supervision, the appointment of instructors/men-

tors during the entire period of the process, etc. such incentives have not yet been prescribed.

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 in practical application of the stated 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, thus, in reference thereto, the only solution is to apply general rules on compensation of damages pursuant to the Law on Contracts and Torts.

Regarding the termination of the contract on dual education, in accordance with the provisions of the Law on Dual Education, particular cases whereby the termination of the contract occurs by force of law, have not been specified, namely: if further operation of school is prohibited or the school has been closed in accordance with the law; if the school ceases to meet the prescribed conditions for the educational profile in which the employer implements on-the-job training; if a decision has been adopted whereby concluding that conditions for performing on-the-job training have not been met; if the student losses his/her status or permanently loses his/her health capacity to perform work required by the profession for which he/she is schooled.

In reference to school's ability to terminate the contract with the employer, the provisions of Article 19 of the Law on Dual Education are not specified in detail. For example, in the event the employer fails to fulfil the obligations stipulated in the contract on dual education, the obligation of the school to notify the employer in writing about specific violations of its obligations stipulated by the Law prior to terminating the contract or consequential obligation to provide the employer with an appropriate deadline for correcting such deficiencies have not been prescribed by the stated law. Further, if the employer violates the prohibition from Article 10 of this Law, it is not stipulated for the violation of the prohibition to be formally ascertained in a specific manner (by a specific decision issued by the inspection body, a court decision, etc.). Similarly, it is not stipulated that the violation of student rights should be formally ascertained in a specific manner, which would establish legal certainty, but would also prevent the school from potentially damaging the employer's reputation by unilaterally terminating the contract.

Another issue emerges here in reference to establishing clear regulations of procedure on employment contract termination, from the standpoint of the employer as well as the position of the school, and in terms of the termination technique itself (sending a written notice) and in respect to the period when the termination occurs (on the day the notice is received or on a certain later date), which should be clarified in order to avoid any interpretations and potential disputes. It is also necessary to further specify the termination procedure in the event the student violates the obligations defined by on-the-job training agreement and the Law, which may imply the obligation of the employer to send a written notice to the school whereby the violation of obligations and/or the law by the student will be specified, following which the employer is granted the right to terminate the agreement with the student upon handing over or sending the written termination of the agreement to the student.

FIC RECOMMENDATIONS

- By-laws should be adopted, or authentic interpretations or opinions should be given which will regulate more closely the relationship between the laws on dual education and the Labour Law and other laws governing different aspects of employment, that is, the Labour Law and the Law on Occupational Health and Safety shall be applied accordingly, unless otherwise defined by laws on dual education.
- By-laws should be adopted, or authentic interpretations or opinions should be given, especially for each scope

of business or industry, in respect to all particulars (from specific formal legal requirements to requirements and specificities in practice), which will regulate more closely all aspects of dual education implementation.

- Incentives in form of subsidies or tax allowances that would attract companies in Serbia to join this system should be provided and accordingly, by-laws that regulate them should be adopted.
- 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, without any obligation to compensate the student.
- The provisions of the Law on Dual Education and the Law on Dual Model of Studies in Higher Education shall be amended regarding termination of contracts (between employers and schools/higher education institutions and employers and pupils/students) by force of law, in accordance with the above statements.
- The provisions of both laws shall be amended regarding the ability of the school/higher education institution to terminate the contract with the employer and specify the need for prior formal determination of violations by the employer, before contract termination, in accordance with the above statements.
- Contract termination procedure shall be regulated in both laws in accordance with the above statements.