LABOUR

1.09

With the development of flexible forms of work, which have particularly gained momentum in recent years, the need for more comprehensive changes to the Labor Law is becoming increasingly evident. After a significant step forward in the improvement of labor regulations in 2014, when over 65% of the recommendations from previous editions of the White Book were adopted, there have been no major changes to the core law. It is apparent that further adaptation of the labor legal framework to the needs of the labor market will have to wait for some time.

In further reforming of the Labor Law, a priority should include, among other things, the need to recognize and regulate more flexible forms of work, such as work from home and remote work, digitalization, and simplification of the highly formal communication between employers and employees, the complex salary structure, and the method of wage calculation. Additionally, certain changes to legal provisions regulating the termination of employment, such as those governing statutes of limitations and notice periods, as well as a clear definition of the procedure for resolving surplus of employees, are needed. This edition of the White Book also points out a number of legal provisions whose application has led to uncertainties in business practices or different interpretations by the courts.

Foreign investors Council welcomes the progress made regarding employment and mobility of foreign nationals in the domestic market, noting that a significant portion of the Council's recommendations given during the adoption of amendments regulating the work and residence of foreigners has been adopted. The amendments to existing regulations towards introducing a single permit and conducting the process electronically lead to simplification of the procedure for granting residence and work permits to foreigners in Serbia.

The new Law on Occupational Health and Safety is aimed at aligning the domestic occupational health and safety system with European standards, raising awareness and responsibility among all participants in the occupational health and safety system, which should ultimately contribute to improving the quality of implementing safe and healthy working conditions. However, the work from home and the remote work remain inadequately regulated by law, highlighting the need once again for amendments to the Labor Law which would provide for closer regulation of the mutual rights and obligations associated with this type of work. With the adoption of all by-laws in this area, the new law is expected to be fully implemented, allowing the effects of the new legal solutions to be observed in practice.

Continuing the initiated labor reforms is a crucial prerequisite for establishing a business environment that will make the Serbian market appealing to foreign investments and encourage the creation of new employment opportunities. The Human Resources Committee, leveraging its expertise and knowledge in regulatory implementation, has strived to identify the key priorities for further improvements in this field.

LABOUR RELATED REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Digitization of labour law documents. In order to align with the trends, solutions and opportunities 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 using electronic documents and electronic signature (adoption of acts and concluding contracts), alternative formal communication on the employer – employee relationship electronically, primarily via e-mail or other similar channels of electronic communication and with the use of internet notice 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 three key points: determining the maximum retention period up to five years after termination of employment, explicitly permitting electronic records and use of various IT tools for this purpose and prescribing the correct way to dispose of paper employee files.	2016			√
Flexible working conditions outside of the 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 just from home), as well as a possibility of changing the work regime and concluding and annex to the employment contract 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). Since legal certainty and security are required, it is necessary to precisely distinguish 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 contract 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 performed outside employer's premises. Within the framework of a flexible organization of work, possibility of implementing overtime should be widened so that it is not limited only to unforeseen circumstances. The employer and employee should have the freedom to agree on the reason for and purpose of overtime, and the employers should be able to negotiate a manager's fee that includes overtime pay for managers who work overtime.	2018			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Rational salary structure and salary compensation. We propose that work performance be viewed only as an optional component of compensation, as opposed to a mandatory one. In addition, the premise for calculating the salary compensation during the absence from work is proposed to be the base salary plus seniority pay. This would make it much simpler for all employers to manage salaries, provide greater flexibility in both the salary contracting and budgeting, and make the salary structure itself more transparent. Also, we propose that the amendments to the Labour Law clearly define the elements or conditions for determining the base salary and the general act of the employer that determines these elements, as well as to determine the conditions for offering an annex which stipulates a change the base salary.	2021			√
Flexible engagement of students in practice. We propose amendments to the section of the Labour Law in the part that regulates professional training and development. These amendments should enable high school students, students and other persons outside employment (both in the field of education and outside the field of education) to gain practical knowledge and experience in a real-world work environment, career advancement, and easier future employment through the use of flexible engagement models. Existing provisions on vocational training and development should be amended to remove additional conditions limiting the possibility of such engagement, 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 working conditions of high school students and university students. Alternatively, an adequate law on work practice could be a good way to regulate the employment of students. However, the draft of this law that was on public discussion provided for 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.	2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
More flexible conditions and procedures for employment termination. It is necessary to: (a) extend the statute of limitation periods for the conduct of proceedings (the subjective period of 6 months to be extended to at least one year and the objective period to 3 years), (b) in the event of the employment contract termination, extend the maximum duration of the notice period from 30 to 60 days, (c) enable employers to issue decisions in the form of an electronic document determining measures (dismissal or milder measure) or releasing employees from liability, as well as delivery these decisions are executed electronically, (d) the employee's refusal to receive the decision served on the employer's premises as if the act had been delivered, (e) enable the employer to unilaterally release the employee from work during the notice period (when the notice period is prescribed/contracted) with the salary compensation payment in the amount equal to the employee's base 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) to be defined by the Labour Law 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, effective on the first day he did not report to work at the employer.	2018			√
Termination of a probationary employment contract. Amend Article 36 of the Labour Law by specifying: (a) that the report of the immediate superior is sufficient justification for the termination of the contract with probationary work, during the probationary period, and that the employer is not required to give the employee any additional period for improvement of his work; (b) that in the case referred to in Article 36, paragraph 4, it is not at all necessary for the employer to justify why the employee did not demonstrate appropriate work and professional abilities, but that he can only issue a declarative decision stating that the employee's employment ends on the day the probationary period expires.	2023			√
Introduction of guidelines for defining the minimum compensation that the employer pays to the employee in case of contracting a non-competition clause after the termination of the employment relationship. Amend Article 162 paragraph 2 of the Labour Law specifying that the agreed amount of compensation cannot be lower than, for example, 1/3 of the average net salary in the previous 3 months before the termination of the employment relationship, for each month of validity of the non-competition clause, after the termination of the employment relationship.	2023			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Specifying the procedure for returning an employee to work. Amend Article 191 of the Labour Law by specifying that if the court legally obliges the employer to return the employee to work, and the employer does not have a vacant position in his organization to which he can assign the employee, he has the right to declare the employee redundant in the sense of Article 179 paragraph 5 point 1 of the Law on work and pay him severance pay.	2023			√
Specifying the submission of employment-related documentation. Amend Article 193 of the Labour Law to specify that the provisions on delivery of the decision on dismissal from Article 185 apply to all documents from the employment relationship, including the offer and the annex to the employment contract.	2023			√
Change of employer. In Article 147, it is necessary to specify precisely what constitutes a change of employer, i.e., which situations (aside from status changes prescribed by the Companies Act) constitute a change of employer.	2023			√
Cancellation of the employment contract in terms of Article 149 of the Labour Law. Article 149 of the Labour Law must be amended by specifying the grounds on which the employer may terminate the employment contract of an employee who refuses to take over the employment contract - does he have to declare him redundant or is it possible to terminate the contract based on Article 175 paragraph 1 point 7) (in other cases determined by law).	2023			√
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. Main challenge is gaining status as a person with disability.	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 should contain the exact job title of the employee who was declared redundant.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The labour market test should not be a mandatory condition in case of hiring senior managers. This should particularly apply to legal representatives specified by the appointment decisions.	2015			√
Temporary residence and work permit, i.e. a unified permit should be valid from the date specified by the request and not from the date of submission of the request. This way, the legal uncertainty regarding the day on which the employee starts work, registration of employee to social insurance and possible misdemeanor liability of the employer, would cease.	2022	√		
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			√
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			√
Dual Education				
Bylaws 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 Safety and Health at Work shall be applied accordingly, unless otherwise defined by laws on dual education.	2018		√	
Bylaws 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.	2016			√
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.	2017			√
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.	2022			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The provisions of the Law on Dual Education and the Law on Dual Model of Studies in Higher Education should 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.	2022			√
The provisions of both laws should 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.	2022			√
Contract termination procedure should be regulated in both laws in accordance with the above statements.	2022			√
Human Capital				
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.	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			√
Consider to support employment through reducing employment costs regarding taxes and contributions and thoroughly regulate legislation that's considerers work from home.	2020			√
Safety and Health at Work				
Amendments and additions to the Law and/or the adoption of bylaws in relation to the conditions of working from home or remotely. The Law requires the adoption of bylaws, in order to better regulate specific aspects of workplace safety and health. In that part, the recommendation is that, to the extent feasible, bylaws whose adoption is governed by the Law be used to further regulate the conditions of work from home or for remote work:				
the procedure for drafting the Risk Assessment Act for jobs performed from home, or remotely;	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
procedures associated with the implementation of preventive measures, mechanisms for controlling the enforcement of measures for safe and healthy work, and mechanisms for determining the causes and methods of injuries during work from home or remote work (primarily preventive measures associated with: work ergonomics, illumination of workstation, the microclimate in the workspace, adequate equipment, accessibility, 83 stress management, maintenance of workspace, electrical installations, fire protection, prohibited activities and conduct, and the employee's actions in the event of a workplace injury);	2021			√
employee training for safe work from home/remote work and digitization of the entire training process and work from home related administration;	2021			√
a distinct separation of the employer's responsibilities, obligations and rights, in relation to the application of measures for safe work from home or remote work.	2021			√
If it is not possible to regulate the conditions of work from home or remote work by bylaws whose adoption is mandated by the Law, it is recommended to further supplement the Law in that section, given the trend of growth and development of work from home or remote work, which necessitates appropriate measures and procedures for safe and healthy work.	2023			√
During the adoption of bylaws, consult the economy and arrange processes in accordance with the general intention to digitize legal processes and procedures as much as possible.	2023			√

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

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

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

Also, since the adoption of the amendments to the Labour Law from 2014 until today:

- certain provisions of the Labour Law remained incon-

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

POSITIVE DEVELOPMENTS

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

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

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

REMAINING ISSUES

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

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

1. **Legal uncertainty regarding the (im)possibility of using an electronic signature and an electronic document.** The Labour Law does not explicitly prescribe whether an employment contract can be signed with an electronic signature, although such a possibility should exist, given that the electronic signature is regulated by the Law on Electronic Document, Electronic Identification and Trust Services in Electronic Business. On the other hand, the Labour Law does not prescribe the possibility of adopting general and individual acts in the form of an electronic document (except when it comes to the decision on annual leave and salary pay slip), 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 work-related expenses outside the employer's premises. Employers have doubts regarding the interpretation of the provision of the Law that requires the employment contract to specify the so-called compensation for other labor costs and the manner in which they are determined for work performed outside of the employer's premises. The mentioned provision leaves a room for different interpretations regarding whether the employer is required to determine by a general act, i.e. to stipulate these costs by an employment contract, or whether the employment contract could provide for the parties' free will 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.** Article 201 of the Labour Law allows for the possibility of engaging individuals outside of employment for the purpose of professional development 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 the completion 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. As a result, employers have difficulty engaging young people for their work engagement, which should be legally secure and include learning through practise. 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 frequently use the contract on performing temporary and periodical jobs due to its flexible legal nature, even though the intention of the legislator was not to engage high school students and university students through the mentioned form of contract.

4. **Criteria for annual leave.** The Law's mandatory criteria (education, work experience, working conditions and contribution at work) for increasing statutory minimum for annual leave for employers are impractical and administratively onerous. In lieu 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, with amendments to the Law specifying that the employer may determine the criteria through general labour act.

5. **Modification of the agreed working conditions to alter the elements used to calculate the base salary.** Employers have difficulty applying Article 171 Paragraph 1 Item 5) of the Labour Law, which states that the employer may offer the employee amendments to the employment contract (annex) in order to alter the elements for determining the base salary. Specifically, in order to eliminate ambiguities and ensure legal certainty, it would be necessary to enact amendments to the Law, prescribing the elements for determining the base salary. In addition, Article 107 Paragraph 1 of the Law determines that the base salary is based on conditions determined in the rulebook, which are essential for work on jobs for which the employee has signed an employment contract and the time spent at work. Therefore, it is unclear from the Law whether the elements for determining the base salary are the same as the conditions for determining the base 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, many employers have not determined or clearly determined the elements or conditions for determining base 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 transferring 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 base 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 assuming a greater role in the evolution 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 concept of "workplace" as obligatory element of the employment contract, 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 to determine that: (a) Annex to the employment contract 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 contract 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. Moreover, regardless of the type of employee engagement, the provisions governing overtime are rather restrictive and should be amended to provide e with greater flexibility when deciding to implement overtime and how to compensate for overtime (via increased salary or days off). This is especially crucial when discussing employees in managerial positions.

9. **Termination of employment due to technological, economic, or organizational changes, abuse of the right to sick leave, use of alcohol, subjective and objective statutes of limitations, notice period in case of dismissal by the employee, termination of employment contract with probationary period** - The procedure for terminating employment due to technological, economic, or organizational changes (redundancy) is not precisely regulated by the Labour Law. 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). This issue is particularly important considering that in previous years, several decisions of the Supreme Court of Cassation have been published, which interpret the redundancy procedure and the order of the mentioned actions in different ways, precisely due to the aforementioned loopholes in the Labor Law, which increases the legal uncertainty in the application of this law. As for the redundancy program itself, there are many questions, and it is unclear whether the employer should first change the rulebook on job systematization or implement a redundancy program. There are also some doubts regarding the application of measures for employment, especially the additional qualification and retraining. In addition, the Labor Law does not regulate the procedure for termination of employment due to abuse of the right to sick leave, but also due to the use of alcohol by employees. Although the Labor Law recognizes the two mentioned reasons for termination, in practice they cause many dilemmas. 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 for the employer (without first regulating the labor law status with the employer), because he established a working relationship with another employer, with whom he is registered for insurance. The needs of practice require 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.

Also, it is becoming increasingly apparent that when the employment relationship is terminated during the probationary period, and based on Article 36, paragraphs 3 and 4 of the Labour Law, the courts take the position that it is necessary to provide an explanation for the termination of the employment relationship, which includes a statement that the employer previously followed the same procedure as in the case of cancellation of the employment contract due to failure to achieve work results, i.e. due to lack of knowledge and ability to perform the tasks he is working on, which implies detailed instructions for improving the employee's work and leaving an additional deadline for improving the work.

10. **Digitalization in labour regulations** – The equality of the use of electronic documents and electronic signature need to be specifically defined in the Labour Law to ensure effective and flexible administration of labor-legal documents. Electronic form is one of the forms of written format, according to Article 7 of the Law on Electronic Documents, Electronic Identification, and Trust Services in Electronic Business, and is entirely equal to traditional written form, which denotes 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 contract is concluded in paper form, with individual wet-ink signatures of the Employer's representative and the employee. The same holds true for general labour acts and decisions, 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 (i.e. paper) form. Also, the problem is rigid attitude of the Labor Inspectorate on this question – employment contracts, 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 Com-

pany Law, the stamp is no longer obligatory. Therefore, digitalization in business operations must be recognized through modernization of the Labor Law provisions that will make it possible on an equitable basis:

- to adopt all labour-related documents (employment contracts, employment rules and other general acts, individual decisions on the use of annual vacation, leaves, suspension 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 labour-related documents on internal Employer's internet notice board and/or by e-mail correspondence; electronic delivery of notifications and documents);

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

11. **Absence of a guideline for the payment of the minimum compensation that the employer pays to the employee in case of contracting a non-competition clause after the termination of the employment relationship** - Article 162 paragraph 2 of the Labour Law stipulates that a non-competition clause can be concluded after the termination of the employment relationship if the employment contract stipulates that the employer will pay the employee the agreed-upon amount of compensation. In practice, the question of what an appropriate amount of compensation is arises frequently, and it is necessary to establish certain guidelines, so that employers can be sure that by paying a certain compensation, they have resolved the issue of the prohibition of competition during the contracted period following the termination of the employment relationship. The current situation is that, if the compensation from Article 162 paragraph 2 of the Labour Law is contracted in a disproportionately low amount (which is an issue that should ultimately be resolved by the court), the employee is permitted to later request a determination of the nullity of such a provision, which creates a problem in practice and introduces legal uncertainty.

12. **Reinstatement of the employee in case of annulment of the dismissal decision** - Regarding Article 191 of the Labour Law, it is necessary to finally resolve the dilemma that arises when the employee has legally prevailed with a claim for the annulment of the dismissal decision, and the employer is obligated to return him to work, but the employer has no vacancy in his work organization or no suitable position to assign the employee to. Employers are uncertain as to whether they must create a new position at any cost or whether they have the option of declaring the employee redundant and paying him severance pay.

13. **Submission of documents in the employment relationship** - The current legal solution regarding the submission of documents from the employment relationship is unsatisfactory because it does not cover all cases involving submission of documents from the employment relationship. This situation must be rectified so that employers clearly understand how to submit all such documents.

14. **Change of employer** - The current legal solution is unsatisfactory because the Labour Law does not define what constitutes an employer change, which in practice generates dilemmas and legal uncertainty.

15. **Termination of the employment contract upon transfer of the employment contract to the successor employer.** The current legal solution lacks a precise definition of how an employer can terminate a contract with an employee who refuses to transfer the contract to a successor employer. It is unclear from Article 149 of the Labour Law, r on what grounds an employer may terminate a contract with an employee who refuses to take over the contract.

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 align with the trends, solutions and opportunities 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 using electronic documents and electronic signature (adoption of acts and concluding contracts), alternative formal communication on the employer – employee relationship electronically, primarily via e-mail or other similar channels of electronic communication and with the use of internet notice 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 three key points: determining the maximum retention period up to five years after termination of employment, explicitly permitting electronic records and use of various IT tools for this purpose and prescribing the correct way to dispose of paper employee files.

- **Flexible working conditions outside of the 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 just from home), as well as a possibility of changing the work regime and concluding and annex to the employment contract 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). Since legal certainty and security are required, it is necessary to precisely distinguish 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 contract 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 performed outside Employer's premises. Within the framework of a flexible organization of work, possibility of implementing overtime should be widened so that it is not limited only to unforeseen circumstances. The Employer and employee should have the freedom to agree on the reason for and purpose of overtime, and the Employers should be able to negotiate a manager's fee that includes overtime pay for managers who work overtime.

- **Rational salary structure and salary compensation.** We propose that work performance be viewed only as an optional component of compensation, as opposed to a mandatory one. In addition, the premise for calculating the salary compensation during the absence from work is proposed to be the base salary plus seniority pay. This would make it much simpler for all employers to manage salaries, provide greater flexibility in both the salary contracting and budgeting, and make the salary structure itself more transparent. Also, we propose that the amendments to the Labour Law clearly define the elements or conditions for determining the base salary and the general act of the employer that determines these elements, as well as to determine the conditions for offering an annex which stipulates a change the base salary.

- **Flexible engagement of students in practice.** We propose amendments to the section of the Labour Law in the part that regulates professional training and development. These amendments should enable high school students, students and other persons outside employment (both in the field of education and outside the field of education) to gain practical knowledge and experience in a real-world work environment, career advancement, and easier future employment through the use of flexible engagement models. Existing provisions on vocational training and development should be amended to remove additional conditions limiting the possibility of such engagement, 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 working conditions of high school students and university students.

Alternatively, an adequate law on work practice could be a good way to regulate the employment of students. However, the draft of this law that was on public discussion provided for 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 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 equal to the employee's base salary, (f) regulate the procedure of termination of employment due to technological, economic or organizational changes – redundancy in cases when program is mandatory - is the employer obliged to first amend the rulebook on the systematization of workplaces or to adopt a solution-finding program of employee redundancy first, and when program is not mandatory, clearly state 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) regulate the procedure of termination of employment due to abuse of the right to sick leave, but also the termination procedure due to the use of alcohol by employees, (h) to be defined by the Labor Law 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, effective on the first day he did not report to work at the employer.

- **Termination of a probationary employment contract.** Amend Article 36 of the Labour Law by specifying: (a) that the report of the immediate superior is sufficient justification for the termination of the contract with probationary work, during the probationary period, and that the employer is not required to give the employee any additional period for improvement of his work; (b) that in the case referred to in Article 36, paragraph 4, it is not at all necessary for the employer to justify why the employee did not demonstrate appropriate work and professional abilities, but that he can only issue a declarative decision stating that the employee's employment ends on the day the probationary period expires.

- **Introduction of guidelines for defining the minimum compensation that the employer pays to the employee in case of contracting a non-competition clause after the termination of the employment relationship.** Amend Article 162 paragraph 2 of the Labor Law specifying that the agreed amount of compensation cannot be lower than, for example, 1/3 of the average net salary in the previous 3 months before the termination of the employment relationship, for each month of validity of the non-competition clause, after the termination of the employment relationship.

- **Specifying the procedure for returning an employee to work.** Amend Article 191 of the Labour Law by specifying that if the court legally obliges the employer to return the employee to work, and the employer does not have a vacant position in his organization to which he can assign the employee, he has the right to declare the employee redundant in the sense of Article 179 paragraph 5 point 1 of the Law on work and pay him severance pay.
- **Specifying the submission of employment-related documentation.** Amend Article 193 of the Labour Law to specify that the provisions on delivery of the decision on dismissal from Article 185 apply to all documents from the employment relationship, including the offer and the annex to the employment contract.
- **Change of employer.** In Article 147, it is necessary to specify precisely what constitutes a change of employer, i.e., which situations (aside from status changes prescribed by the Companies Act) constitute a change of employer.
- **Cancellation of the employment contract in terms of Article 149 of the Labour Law.** Article 149 of the Labour Law must be amended by specifying the grounds on which the employer may terminate the employment contract of an employee who refuses to take over the employment contract - does he have to declare him redundant or is it possible to terminate the contract based on Article 175 paragraph 1 point 7) (in other cases determined by law).

LAW ON VOCATIONAL REHABILITATION AND EMPLOYMENT OF PERSONS WITH DISABILITIES 1.33

CURRENT SITATION

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

POSITIVE DEVELOPMENTS

There were no significant changes in the field of PwD employment and inclusion in relation to the previous period regarding legislation activities. The impression is that neither the legislature, nor the implementing institutions have made this legislative area a focus of their attention. Positive progress can be seen in forming of various organizations and platforms with focus on this topic. It is a significant effort of such organizations to make this group of candidates visible on the market, as well as to bring their needs closer to Employers. These efforts could give good results in the future.

REMAINING ISSUES

Problems remain the same and are reflected in the following:

- The problem for employers is the lack of staff that would apply for jobs appropriate for PwD.
- Working in some industry sectors (such as construction, private security, manufacturing, etc.) requires specific medical fitness and it is therefore practically impossible to employ PwD.
- Failure to carry out the classification of business activities of employers that, due to their nature, cannot be subject to the application of the Law in the same way as business activities not requiring special medical fitness or special mental or physical abilities of employees for certain jobs. Furthermore, companies selling services rather than products, where employees with special mental and physical characteristics are a key factor in performing core business activities, are unable to meet the requirements set by this Law.

- The Law on Vocational Rehabilitation and Employment of Persons with Disabilities is in conflict with the Law on Private Security. The latter stipulates that, starting from 1 January 2017, private security activities can only be carried out by persons with an appropriate license the acquisition and maintenance of which requires appropriate mental and physical abilities. This especially applies to employees handling weapons, who are required to undergo annual health check-ups. Thus, companies from the private security industry are additionally prevented from complying with provisions of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities.
- Although there is a possibility for current employees to undergo an assessment of their working ability to be recognized as PWD, in practice such a procedure is very complex and administratively cumbersome, as it includes the submission of numerous documents by the employee and the involvement of different state authorities with somewhat overlapping powers within just one procedure (the National Employment Service [NES] and the National Pension and Disability Insurance Fund [NPDIF].

FIC RECOMMENDATIONS

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

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

EMPLOYMENT OF FOREIGN NATIONALS 1.67

CURRENT SITUATION

Employment of foreigners is regulated by the Employment of Foreigners Act from 2014 and the Foreigners Act from 2018. Last amendments to both acts, have entered into force in August 2023, whereas the most significant provisions had come into force from February 1st, 2024. By laws had been adopted in January 2024.

The employment, special cases of employment and self-employment of foreigners in Serbia is subject to obtaining single permit, except in cases set by the law.

POSITIVE DEVELOPMENTS

The Amendments to the Act on Foreigners and the Act on Employment aim to simplify the procedure for obtaining temporary residence permit and work permit.

The single permit, which includes temporary residence permit and work permit, is issued upon the Employer's or expat's application submitted online through websites

Euprava and Welcometoserbia. Should the Immigration Office and the National Employment Service find the conditions are met, they will issue the single permit. The legal deadline to decide the application is reduced to 15 days from submitting the application properly. It is provided for social insurance registration based on the confirmation of launched process for single permit issuance. An additional improvement is provided in the e-administration system to enable launching of the application process ahead of a planned start of work. Expectingly this will be a solution for the practical needs of the processes of planning, budgeting and administering within groups or between companies, especially in cases of secondments and intra-company transfers or applications submitted from abroad.

The amendments to laws should make progress, especially taking into account the following:

- The labor market test is done upon the Employer's vacancy nomination (PPZ) submitted separately or as an integral part of the single permit application. The NES will issue an assessment within a period of 4 days.
- The single permit will be issued for a duration of up to 3 years. It remains for practice to take a stand in cases where bilateral conventions prescribe a shorter term.
- The application for the single permit for a new period (in the previous law: extension) can be submitted not earlier than 30 days before the expiration date and no later than the date of expiration of the single permit.
- Application through the websites and issuance of the single permit in the form of a biometric document.
- Foreigners may work also based on the Visa D without need to apply for the single permit, in the period of up to 180 days.

REMAINING ISSUES

- The fact the employer had not declared any redundancy from the nominated job position within three months prior to the application is proved by a certificate issued by the CROSO. The employer must additionally submit, along with such certificate, a statement that no redundancy has been declared from the nominated vacancy or if redundancy has been declared within the period of three months the Employer is held to submit the individual dismissals in order to establish that they relate to other jobs. It has been announced that the NES will obtain this information ex officio from CROSO, however, the register does not contain information about the job that was subject to redundancy, since it is not compiled in the deregistration.
- The labour market test is required for obtaining single permit in each case, even regarding the senior management, which is impractical, as well as in the cases of renewal of residence and work permit, for the employees who perform work at the same position.
- Some employers report problems in working with the portals, such as not receiving notifications in e-inbox or their deletion, unclear notifications about the need to supplement documentation, delays in issuing the single permit, the inability of the authorized person to submit the single permit online application on behalf of the employer, etc. Technical improvements to the online form are expected that will resolve these issues.
- Although in accordance with the Law, foreigners are allowed to work on the basis of Visa D during the period for which it is approved, in practice a problem arises due to the impossibility of registering to CROSO with the registration number which the foreigner receives.

FIC RECOMMENDATIONS

- The Central Registry of Mandatory Social Insurance should contain the exact job title of the employee who was declared redundant.
- Technical improvements to the online forms which will enable an efficient use of all the functionalities provided by the regulations.
- Facilitating the registration of an employee to CROSO on the basis of a Visa D.

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 peo-

ple for indefinite-term in order to lease them to the beneficiaries for a fixed-term. This leads to an increase in the number of persons engaged on the basis of the agreement on temporary and periodical work (directly or through a youth cooperative). Workers engaged on this basis are less protected than leased employees under the Staff Leasing Act (persons engaged based on the agreement on temporary and periodical work are not guaranteed the same work conditions as comparative employees at the beneficiary). Reduced flexibility in engaging staff in Serbia certainly discourages potential and existing investors. Limiting the number of fixed-term employees that a beneficiary can lease from a staff leasing agency practically obviates the need for staff leasing agencies on the Serbian labor market.

The concept of a comparative employee from the Staff Leasing Act introduces legal uncertainty and potentially leads to the violation of the basic principles of the labor legislation. Namely, the Staff Leasing Act defines a comparative employee by developing the basic idea of the Directive 2008/104/EC (harmonization with the Directive 2008/104/EC was one of the goals when adopting the Staff Leasing Act). However, the Staff Leasing Act prescribes that, when there is no comparative employee at the beneficiary, the leased employee's base salary cannot be less than the base 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 base 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 type of 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 1.00

CURRENT SITUATION

Human capital in Serbia is one of the most important resources for the economic growth and development of our country. In the past period, a definite improvement of the educational system was visible, which contributed to the increase of better qualifications of the workforce. The country's universities and colleges offer a wide range of programs and occupations, and there is a visible increase in the number of young people completing higher education. However, Serbia is facing serious challenges such as brain drain, where highly skilled labor goes abroad in search of better business opportunities and life. This directly affects the reduction of labor availability within the country. Highly qualified people, as well as people with a lower level of education for basic jobs, are very challenging to hire and retain because they leave the country trying to find better-paid work abroad. On the other hand, there is a constant need for additional investments in training, development and improvement of the workforce. strength in order to respond to the changes and demands of the modern labor market. All activities aimed at encouraging entrepreneurship, developing the IT sector, promoting education and greater involvement of young people in innovative projects can significantly improve the state of human capital in Serbia and contribute to long-term economic growth.

In addition to all of the above, the situation on the labor market is becoming more and more challenging. In the previous period, the biggest challenge for companies was finding and attracting candidates, as well as retaining existing employees. Such a trend is visible for a longer period of time. It points out that companies have big challenges on how to keep existing employees on the one hand, and on the other hand how to attract better candidates from the labor market.

The lack of employees is felt in all industries. This deficiency is evident both in the number of executors required and in their professional structure. There is a noticeable lack of competence, knowledge and skills for various positions in all activities. These problems become major organizational challenges for companies.

Another visible segment that we accepted from the previous period was working from home as an important benefit that employees use frequently. This type of work ceases to be dominant and its representation is rapidly decreasing. The reasons for this are different, and from the IT industry, which used it the most, it becomes only one benefit and the possibility to allow employees to work from home 1-2 times a week.

The unemployment rate varies in the territory of the Republic of Serbia, which, in many ways, reflects the state of the economy in different parts of the country, and unemployment is still the lowest in the territory of Vojvodina, which is why employers in the territory of this autonomous province face a great challenge in the recruitment and selection of suitable personnel. The unemployment rate in the entire country in the first quarter of 2024 was around 10.1%, while employers have increasing challenges to find, attract and retain the workforce and especially quality candidates, especially in the field of IT where major changes and developments are visible that have caused employers to become more cautious when investing in new technologies and hiring more people.

Finally, despite the economic crisis that hit the whole world, the minimum wage will be increased this year as well as the previous one.

POSITIVE DEVELOPMENTS

Certain changes related to the state's efforts to support employment in all industries are visible.

REMAINING ISSUES

Despite the numerous efforts of the Government and the legislation to stand in the way of the negative appearance of the problem of the gray economy and illegal work, it is still very current. The number, age structure and qualifications of labor inspectors are one of the key challenges that the state must face. Unloyal competition, unfair market competition in various, especially low-profit industries and a large number of economic entities that do not fulfill basic legal and fiscal obligations towards employees and the state, as well as unpredictable labor costs, represent a major obstacle to the development of the market as well as human capital.

The education system still needs to be improved and better connected with the business community. In this way, the gap between education and the needs of employers would be reduced, and the image of the Republic of Serbia as a desirable investment location would be improved. It is nec-

essary to promote the importance of education at all levels, because it is a generator of the development of society, the economy and the entire country.

It is necessary to encourage the trend of rejuvenating the population as well as stimulate the migration of human capital within the Republic of Serbia in order to equally develop underdeveloped areas and thereby reduce the gap in the needs of the economy in different parts of the country. The decision of foreign investors to enter the market of a certain country is conditioned by the quality and structure of the labor force in the market as well as clear labor costs.

With the current situation and the planned amendments to the Labor Law, there is a great need for amendments to the Law in various areas.

FIC RECOMMENDATIONS

- The education system should continue to be improved. For that, it is essential to establish regular contact between the Council and the Government, the ministries responsible for education, youth and sports, as well as with universities. The Council and the business community in Serbia are ready to provide support and make available their expertise, and based on the analysis of the needs of the economy and the real sector, create and establish new educational profiles, as well as regularly correct enrollment quotas at all faculties in accordance with market needs.
- Define the legal framework for the relationship between employer and student in order to simplify the application of professional practice of students during regular schooling.
- Define the legal framework for the training of persons with higher educational profiles for independent work in the profession, regardless of the acquisition of the conditions for passing a professional exam, i.e. performing an internship.
- With the employment action plan of the National Employment Service, define, redefine and expand the range of educational profiles that will be included in the action plan and employment policy, that is, listen to the needs of the market and employers.
- Create a plan for the migration of human capital within the territory of the Republic of Serbia in order to equally develop underdeveloped areas and thereby reduce the gap in the needs of the economy in different parts of the country, and in order to prevent migration outside the Republic of Serbia, citizens have already been given an incentive to within the territory of the Republic of Serbia look for a better place to live and work.
- Consider supporting employment by reducing employment costs, especially in relation to taxes and wage contributions, as well as legally define all aspects of working from home.
- Facilitate and promote supplementary work at all levels.

HEALTH AND SAFETY AT WORK 1.00

CURRENT SITUATION

The period before us was in many ways characterised by the experts' meetings and conferences regarding the application of the Law on Safety and Health which was adopted on 28 April 2023 (Official Gazette, no. 35/2023) (hereinafter: the "Law") and entered into force on 7 May 2023. The Law brings many changes, and the employers were left with a two-year deadline to comply their business activities with the Law. Although, it is expected that many questions will be further regulated with bylaws, for whose passage there is an 18-month deadline from the day the Law was put into force. Some of the most noteworthy novelties refer to the new definition of the concepts of workplace, work at heights, high-risk workplace, risk assessment, risk assessment acts, prevention, preventive measures, expanding the authority of the labour inspection, tightening of penal policy concerning legal entities and responsible persons, giving more importance to data protection etc. On the other hand, new concepts were introduced such as worksite, workplace environment, work at depths, remote work and working from home, health and safety advisor and health and safety associates, employee representative, harmfulness, electronically maintained records of work injuries and license registries, as well as the introduction of a work permit issuance system.

The general impression indicates that the legislator's intention, with this Law, was to introduce the domestic system of safety and health at work with European standards, as well as to raise consciousness and responsibility of all agents within the safety and health at work system, notably with the employers. The end goal of the Law surely is to prevent workplace injuries, occupational diseases and diseases relating to work, all for accomplishing the physical, psychological, and social welfare of the employees throughout their working lives.

POSITIVE DEVELOPMENTS

The pandemic of the infectious disease COVID-19 led to the mass application of the work-from-home model, i.e. remote work, by employers throughout Serbia, and in the period after the pandemic, many employers whose work process allows it, continued to apply these models. Working from home and remotely is now regulated by the Law, but it is still not known whether this topic will be additionally regulated through by-laws. Employers can now, within the confines of the law, make the work organisation more flexible and competitive in the labour market, as well as more securely respond to the demand of candidates and employees for this work model, which, in the end, can also influence the decentralization of the labour market because a stable internet connection and a computer have become often sufficient for performing jobs.

Also, by introducing the concepts of electronic records and registries of work-related injuries, it is anticipated that the work of professionals in this field will be significantly simplified, and that the work of state agencies will become more efficient.

The legislator's intention to distinguish the concepts of health and safety advisors and health and safety at work associates, by determining the professional profile and the minimum number of these persons at the employer in relation to the type of activity and the number of employees at the employer, as well as the introduction of appropriate licenses for individuals according to the type of work they perform, and thus further improve the quality in performing these jobs, is also recognized. However, it remains uncertain whether the exclusion of social-humanistic sciences from the educational profile of advisors will result in a labour market shortage for advisor positions.

By determining the professional profile and the minimum number of these persons at the employer in relation to the type of activity and the number of employees at the employer, as well as the introduction of appropriate licences for individuals according to the type of work they perform, the legislator intends to distinguish the concepts of health and safety advisors and health and safety associates and thereby improve the quality in performing these jobs. It remains uncertain, however, whether the exclusion of social-humanistic sciences from the educational profile of Advisors will result in a labour market shortage for Advisor positions.

The Law increases the level of protection that employees receive in relation to periodic mandatory safe and healthy work training. As a result, employees at workplaces with higher risks are required to complete such training annually, while employees at other workplaces must do so

every three years. The Law also established a requirement for additional training in situations where an employee's life or health is seriously, inescapably and directly in danger, such as when they suffer a major or fatal workplace injury. Also, training of employee representatives is being introduced.

The improvement is particularly evident when determining the employer's responsibility to ensure that only those employees to whom the employer has given proper instructions and permission to work have access to areas that are seriously, inescapably, or directly dangerous or that are harmful in a way that puts the employee's health in danger.

The Law now recognizes a wider range of employee medical exams. The Law now also allows for targeted medical exams, which will be further governed by bylaws, in addition to the initial and periodic medical exams that are required for employees in workplaces with increased risk. Also, the Law now explicitly stipulates that the employer must regularly, but no later than five years after the previous examination, send the employee for a medical examination that corresponds to the risks at the workplace.

Last but not least, the Law gives the employer the freedom and responsibility to more specifically control the rights and obligations, measures, and processes for safe and healthy work in accordance with the specifics of their business. All of which ought to improve the standard of enforcing safe and healthy working environments.

REMAINING ISSUES

Lack of regulation and legal ambiguities around remote work. The Law does not specifically address the rights and obligations of those involved in working remotely or from home, hence remote work has remained legally unregulated. As a result, it would be necessary for bylaws to regulate at least a basic set of responsibilities for employers and employees when employees work from home or work remotely, and industry or company stakeholders should also be involved in the drafting of these bylaws. Bylaws should unquestionably address obvious differences that exist in relation to work from the employer's premises, particularly with regard to preventive measures for safe work from home/remote work, minimum ergonomic requirements, lighting, and installations, as well as the creation of a Risk assessment act for jobs performed remotely.

Risks associated with monitoring safe home-based or remote work. Since employers cannot directly control whether or not the requirements for safe and healthy work are met in the area where employees perform their duties, the individual's constitutional right to the inviolability of their home cannot be seen as a constraining factor. Therefore, while regulating requirements through bylaws addressing the integrity of electrical installations, lighting, workspace accessibility, and ergonomic conditions, which unavoidably need the involvement of employees, which unavoidably require the involvement of employees. However, as a result of this, employees' responsibilities cannot be the same as when they work from a location that is directly under their employer's control. On the other hand, dangers increase while performing remotely due to trends and employee demands to frequently change locations and places from which work is performed (which are not the employees' homes), including work outside the territory of the Republic of Serbia.

Risks related to workplace injuries when working from home, i.e., remotely. A crucial factor in situations of injuries when working from home is the inviolability of residence. Because they lack the legal authority to legally visit the scene of the injury to ascertain its cause and manner, employers in such situations must rely on information provided by the employees themselves. It is also necessary to establish a new code or codes (apart from determining the workplace environment) that would be submitted to the competent authorities in case of injuries when working from home or while working remotely. Therefore, new bylaws should prescribe how employers will determine and report the cause of injuries and provide an appropriate code when work is performed remotely.

Finally, it is equally important to have a clear position on whether the "workplace" in the context of working from home includes only the workspace in the employee's home where they carry out their contracted duties or also includes the kitchen, dining room, and bathroom/toilet.

Application of the Law pending the adoption of Bylaw regulations. The Law stipulates that competent ministries have 18 months (i.e. by November 2024) to prepare relevant bylaws. Throughout this time, existing bylaws will still be applicable if they are not in conflict with the Law. Another partially ambiguous clause in the Law states that employers have 2 years (i.e. by May 2025) to organize their operations in compliance with the Law's provisions. This clause

was open for interpretation upon adoption of the Law, i.e. whether it refers to compliance with all of the Law's provisions or just those that have to do with advisers' and associates' health and safety licensing obligations. Consequently, it is unclear whether employers will face penalties during this two-year period for any Law-related non-compliance. It would be important for the competent ministry to provide an official interpretation and stance on this provision.

FIC RECOMMENDATIONS

Amendments and additions to the Law and/or the adoption of bylaws in relation to the conditions of working from home or remotely. The Law requires the adoption of bylaws, in order to better regulate specific aspects of workplace safety and health. In that part, the recommendation is that, to the extent feasible, bylaws whose adoption is governed by the Law be used to further regulate the conditions of work from home or for remote work:

- the procedure for drafting the Risk Assessment Act for jobs performed from home, or remotely;
- procedures associated with the implementation of preventive measures, mechanisms for controlling the enforcement of measures for safe and healthy work, and mechanisms for determining the causes and methods of injuries during work from home or remote work (primarily preventive measures associated with: work ergonomics, illumination of workstation, the microclimate in the workspace, adequate equipment, accessibility, stress management, maintenance of workspace, electrical installations, fire protection, prohibited activities and conduct, and the employee's actions in the event of a workplace injury);
- employee training for safe work from home/remote work and digitization of the entire training process and work from home related administration;
- a distinct separation of the employer's responsibilities, obligations and rights, in relation to the application of measures for safe work from home or remote work.
- If it is not possible to regulate the conditions of work from home or remote work by bylaws whose adoption is mandated by the Law, it is recommended to further supplement the Law in that section, given the trend of growth and development of work from home or remote work, which necessitates appropriate measures and procedures for safe and healthy work.
- During the adoption of bylaws, it is necessary to consult the economy as well, in order to share practical experiences and problems in the application of certain legal norms, and thus prevent the unilateral proposal of norms that are difficult or almost impossible to apply in practice. Also, it is necessary to arrange the processes in accordance with the general intention to digitize legal processes and procedures as much as possible.

DUAL EDUCATION 1.14

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. By the amendments to the Law on Dual Education from 2023, improvements have been established which are important for further implementation of learning through work .

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 eight 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

In comparison to previous conditions, some progress is evident in reference to the recommendations set forth by the National Education Council and the Council for Vocational and Adult Education. 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. Some of these novelties are as follows:

- A preliminary agreement on dual education is to be concluded;

- The number of hours a student can spend at the employer has been increased - from 6 to 8;

- The amount of compensation for learning through work still remains a minimum of 70% of the minimum hourly labour cost for each hour spent learning through work, while an option is available to pay the compensation in instalments;

- It introduces the concept of training alliances and training centres;

- The concept of learning through work is clearly defined, and hereof document represents a jointly created plan between the school and the employer, which can be amended and supplemented as per the specific needs of the employer during the term of the dual education contract;

- The structure of the committee responsible for determining if the conditions for performing learning through work have been met, has been changed (labour inspectors are no longer required to be members of the committee);

- A person who possesses basic academic and didactic knowledge and skills and holds a valid authorizations, issued by national or international regulatory bodies as per the relevant professional field , is now able to be an instructor (he/she is not required to undergo training for an instructor's license in a dual education);

- A financial support for schools and the relevant branch of the economy can be granted based on the decree passed by the Government of the Republic of Serbia (but only in the form of financial aid/support for students, as per Article 34, and for education and training of students for shortage occupations).

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).

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/mentors during the entire period of the process, etc. such incentives have not yet been prescribed. There is only a general provision stipulated under Article 34 of the Law on Dual Education, which prescribes that the Government shall establish detailed conditions for granting financial support to schools and employers as per needs of financial security for students participating in educational programs for shortage occupations (lack of recognition that such support granted to all employers can be an incentive for participating in the dual education project, but also no method has been provided for determining such support).

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. Additionally, the Law on Dual Education fails to define compensation for damages under any provision, which could undoubtedly lead to the conclusion that the compensation in question shall be interpreted in accordance with other applicable laws.

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.

Circumstances requiring further consideration which can often become a focal issue demanding adjustment and harmonisation in practice, reflect the need to align the program of learning through work with the Regulation determining hazardous child labour ("Official Gazette of RS", no. 53/2017), bearing in mind that a child is any person under the age of 18.

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/pupil 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/pupil.

- 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, leaving a reasonable period for remedying the disputed conditions and breaches of contract.
- Contract termination procedure shall be regulated in both laws in accordance with the above statements.
- The obligation shall be defined as to align and adjust the Program for the implementation of learning through work with the by-law prescribing the restrictions in reference to hazardous child labour.