Employment and employee benefits in Serbia: overview

by *Vuk Draskovic* and *Milos Rubezic*, Bojovic Draskovic Popovic & Partners

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A Q&A guide to employment and employee benefits law in Serbia.

The Q&A gives a high level overview of the key practical issues including: employment status; background checks; permissions to work; contractual and implied terms of employment; minimum wages; restrictions on working time; illness and injury; rights of parents and carers; data protection; discrimination and harassment; dismissals; redundancies; taxation; employer and parent company liability; employee representation and consultation; consequence of business transfers; intellectual property; restraint of trade agreements, relocation of employees and proposals for reform.

To compare answers across multiple jurisdictions, visit the employment and employee benefits *Country Q&A tool*.

The Q&A is part of the global guide to employment and employee benefits law. For a full list of jurisdictional Q&As visit *www.practicallaw.com/employment-guide*.

Scope of employment regulation

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Laws applicable to foreign nationals

The main piece of legislation applicable to foreign nationals in Serbia is the Law on Employment of Foreign Nationals (*Zakon o zapošljavanju stranaca, Official Gazette of the Republic of Serbia No. 128/14, 113/17 and 50/18*). The Labour Law (*Zakon o radu, Official Gazette of the Republic of Serbia No. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17 and 113/17*) and other local regulations also apply to the employment of foreign nationals in Serbia. Bilateral tax and social security treaties may be relevant to foreign nationals, depending on their state of domicile.

Laws applicable to nationals working abroad

The Law on Conditions for Secondment of Employees to Temporary Work Abroad and their Protection (*Zakon o uslovima za upućivanje zaposlenih na privremeni rad u inostranstvo i njihovoj zaštiti, Official Gazette of the Republic of Serbia No. 91/15 and 50/18*) regulates the status of Serbian nationals working abroad. Bilateral tax

and social security treaties are also relevant, if these treaties exist between Serbia and the state in which a Serbian national is seconded.

Employment status

2. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

Categories of worker

The Labour Law does not formally distinguish between different categories of workers. A traditional employment relationship is the most usual way of hiring personnel in Serbia. There are two types of employment relationships, depending on their duration. As a rule, an employment relationship is concluded for an unlimited period of time. Exceptionally, employment agreements can be entered into for a limited period of up to 24 months, or longer in certain specific cases.

Workers can also be engaged outside an employment relationship, in cases and subject to the conditions prescribed by the Labour Law. These flexible types of engagement include the following:

- Temporary and occasional work (up to 120 working days a year).
- Service agreement (only for work that is outside the employer's business activities).
- Agreement on professional improvement (concluded mainly with trainees).
- Additional work (concluded with employees engaged full-time by another employer).

In addition, as a special type of work outside an employment relationship, the recently adopted Law on Simplified Employment of Seasonal Workers in Certain Activities (*Zakon o pojednostavljenom radnom angažovanju na sezonskim poslovima u određenim delatnostima, Official Gazette of the Republic of Serbia No. 50/18*) introduces seasonal jobs in the sector of agriculture, forestry and fisheries. These seasonal jobs may last for up to 180 days within a calendar year.

Entitlement to statutory employment rights

The provisions of the Labour Law mainly regulate the status of employees, and do not apply to other workers. Therefore, alternative types of engagement are far more flexible. Employment rights are mainly reserved for employees, whereas other workers enjoy much more limited protection.

Time periods

Time periods are mainly relevant to employees engaged for a limited period of time, as well as workers engaged for temporary and occasional work (*see above, Categories of worker*).

Recruitment

3. Are any grants or incentives available for employing people? Does any information/paperwork need to be filed with the authorities or given to new employees when employing people?

Grants or incentives
There are numerous grants and incentives for employing new employees and attracting investments, including:

- Tax and social security benefits.
- Subventions for the purpose of attracting direct investments.

The tax and social security benefits consist of refunds of a part of the taxes and mandatory social security contributions paid for new employees who have previously been registered for a certain period of time on the unemployment registry of the National Employment Agency. The National Employment Agency also provides monetary grants through public invitation for engaging certain specific categories of employees (for example, individuals under 30 years of age without qualifications or with low qualifications, young people who have been seeking a job for more than 12 months, young people who had, or currently have, the status of a child without parental care, people older than 50 who have the status of redundant employees, persons with disabilities, Roma people, and victims of domestic violence).

Additionally, Serbia has a rather sophisticated system for attracting investors. Investment projects are generally eligible for state subventions. These subventions are calculated based on various parameters, such as:

- Type and value of the investment.
- Number of newly employed persons.
- Location of the investment.

Filings
The required filings depend on the type of benefit. Generally, procedures are rather formal and administrative, and consist of numerous steps and documents to be provided. There are also certain formalities when employing people generally.

Background checks

4. Are there any restrictions or prohibitions on carrying out background checks in relation to applicants?

An applicant must provide the employer with documents and other evidence proving that they meet the requirements for working in the relevant position (*Labour Law*). An employer cannot request from an applicant any information relating to his/her family and marital status and family planning, and any other documents and evidence that are not directly significant for the position.

Background checks/screening of potential employees is not standard practice in Serbia, but there are no direct restrictions in that respect.

Permission to work

5. What prior approvals do foreign nationals require to work in your country? What information/ paperwork needs to be kept or filed with the authorities when they start work?

Visa
Procedure for obtaining approval. A foreign national wishing to work in Serbia must obtain a temporary residence permit (type D visa). The following documents must be submitted along with the request to the Ministry of Interior:

- Two photographs.
- Copy of white card (registration of arrival).
- Copy of passport.
- Guarantee letter provided by the employer.
- Copy of the employment agreement.
- Excerpt for the employer from the Serbian Business Registers Agency.
- Proof of sufficient means of subsistence.
- Health insurance.

- Short biography (*curriculum vitae*).
- Certificate from the employer's commercial bank account turnover in the last six months.
- Proof of payment of administrative fees (about EUR200).

Cost. The administrative fees for a type D visa amount to about EUR200.

Time frame. A foreign national must be present during the submission of the request for issuance of a temporary residence permit. The procedure for obtaining a temporary residence permit takes up to one month. Temporary residence is approved for a period of up to one year (*see below*), which can be renewed provided the respective legal ground to renew exists.

Sanctions. There are various sanctions for breaching the Law on Foreign Nationals (*Zakon o strancima, Official Gazette of the Republic of Serbia No. 24/18*), which regulates temporary residence. Most of these sanctions are pecuniary, but also include a protective measure of deportation.

Permits

Procedure for obtaining approval. The Law on Employment of Foreign Nationals (*Zakon o zapošljavanju stranaca, Official Gazette of the Republic of Serbia No. 128/14*) recognises the following two types of work permits:

- Personal work permit.
- Work permit.

A personal work permit is issued on a personal request of a foreign national, and allows the foreign national to:

- Enter into an employment agreement.
- Be self-employed.
- Exercise certain rights in the event of unemployment.

This permit is issued to foreign nationals with a permanent residence permit, to refugees and to certain special categories of foreign nationals. Additionally, a personal work permit can be issued for the purposes of family reunification, under certain conditions.

A work permit is granted on the request of the employer (except for works permit for self-employment). There are three different types of work permits:

- Work permit for employment.
- Work permit for self-employment.
- Work permit for special cases.

The foreign national can only perform the work for which he/she has obtained the work permit. There are specific procedures regarding the required documents and conditions that must be fulfilled for the three categories of permits.

A work permit for employment can only be issued if the following conditions are met (*Law on Employment of Foreign Nationals*):

- Before filing the request for the work permit, the employer did not make redundant any employee working in the position for which the work permit is requested.
- If in ten days preceding the request for the work permit, the employer was not able to find a suitable qualified employee among:
    - Serbian citizens;
    - persons with a personal work permit; or
    - persons who have free access to the Serbian labour market.

In addition, the potential introduction of quota systems (limiting the number of work permits that can be issued to foreign nationals) can have an impact on the possibility of employing foreign nationals.

Cost. The administrative fee amounts to about EUR100.

Time frame. The procedure for obtaining a work permit for employment takes up to 25 days, whilst the procedure for its renewal takes up to 15 days. A work permit for employment is issued for the duration of the temporary residence visa and can be renewed. Other work permits are either issued for the duration of the temporary residence visa or for one year.

Sanctions. The sanctions for employers include:

- Pecuniary penalties of up to RSD1 million.
- Prohibitions on performing certain activities for a period of six months up to one year.

Foreign nationals can also be fined up to RSD150,000.

Restrictions on managers and directors

6. Are there any restrictions on who can be a manager or company director?

There are no general restrictions on who can be a company director.

Age restrictions
An employment relationship can only be established with a person of at least 15 years of age (*Labour Law*). Therefore, it is possible to conclude that a person under 15 cannot be appointed as director.

Nationality restrictions

There are no nationality restrictions.

Other restrictions
A person who is already a director or a member of the supervisory board of more than five companies cannot be appointed as director of a joint stock company.

Regulation of the employment relationship

7. How is the employment relationship governed and regulated?

Written employment contract
A written employment agreement must be concluded with each employee. There are 13 mandatory elements that must be included in employment agreements, including the (*Labour Law*):

- Name and registered seat of the employer.
- Name and place of residence of the employee.
- Work post and job description.
- Place of work.
- Type of employment.
- Basic salary on the date of conclusion of the employment agreement.

An employment agreement must be drafted in the Serbian language. Versions in other languages are optional.

Implied terms
An employment agreement must comply with the Labour Law and cannot provide less protection to employees than what is guaranteed under the Labour Law. Provisions of an employment agreement that are less favourable to employees than the minimum rights prescribed by the Labour Law are void.

Collective agreements
There are three types of collective agreements: individual, special (industrial) and general.

An individual collective agreement is concluded at the level of the employer, between the employer and a representative trade union. Employers that do not conclude individual collective agreements frequently regulate employment-related matters through work rules.

Special (industrial) agreements are concluded at the level of the particular sector. A general collective agreement is concluded at the state level and is applicable to all employers and employees in Serbia. There is currently no general collective agreement in force.

8. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

An employer cannot unilaterally change the terms and conditions of employment provided by an employment agreement or a collective agreement. Any change to an individual employment agreement must be concluded as an annex between the employer and the employee, in accordance with a detailed procedure set out in the Labour Law.

An employer that has adopted work rules (that is, a general unilateral enactment that regulates employment-related matters) can unilaterally amend them, including the terms and conditions of employment prescribed in these rules.

Minimum wage

9. Is there a national (or regional) minimum wage?

The minimum wage in Serbia currently amounts to RSD143 net per hour. From January 2019, the minimum wage will be increased to RSD155.30 net per hour. The minimum wage applies to all employees.

There are no salary caps or other similar limitations on payment methods applicable to all employees.

Restrictions on working time

10. Are there restrictions on working hours? Can an employee opt out on either an individual or collective basis?

Working hours

The full-time working hours are 40 hours per week. Any extension of the full-time working hours is considered as overtime work, which must be additionally compensated by the employer. The maximum working hours per day and per week is set out in the Labour Law. An employee cannot opt out from the mandatory legal regime regulating overtime work.

Rest breaks
Employees are entitled to a minimum of:

- 30-minute rest break during the daily working hours.
- Daily break of at least 12 hours.
- Weekly break of at least 24 hours.

Shift workers
If work is organised in shifts that include night work, the employer must provide for changes of shifts, so that no employee works continuously for more than one week on night shifts. An employee can only work longer than one week on night shifts if he/she consents in writing.

Holiday entitlement

11. Is there a minimum paid holiday entitlement?

The minimum duration of annual vacation is 20 days per calendar year. This minimum can be increased based on various criteria determined in the individual collective agreement, the work rules or the employment agreement (as applicable).

Minimum paid holiday entitlement
Annual vacation is fully paid by the employer. In addition, employees are entitled to an annual vacation allowance. The amount of the annual vacation allowance must be determined at the level of the employer in the applicable individual collective agreement, the work rules or the employment agreements (as the case may be). The minimum amount of the respective allowance is not determined by the Labour Law.

Public holidays
In 2019, there are 12 days of public holidays in Serbia. The number of public holidays varies, depending on any overlap between holidays and weekends or, as the case may be, between two holidays (for example, Easter holidays and May Day). During public holidays, employees are entitled to compensation based on their average salary in the preceding 12 months.

Illness and injury of employees

12. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Who pays the sick pay and, if the employer, can it recover any of the cost from the government?

Entitlement to paid time off
An employee is generally entitled to sick leave any time he/she is sick or injured, without limitation. During the first 30 days of sick leave, the employee receives compensation amounting to either:

- 65% of his/her average salary in the preceding 12 months, in the case of non-work related sickness or injury.
- 100% of his/her average salary in the preceding 12 months, in the case of work-related sickness or injury.

The employer pays compensation during the first 30 days. After then, sick leave is compensated by the state. There are no limitations on the total duration of sick leave or number of sick leaves.

Entitlement to unpaid time off
Any sick leave triggers a right to paid time off.

Recovery of sick pay from the state
After the first 30 days of sick leave, the employer actually pays the sick pay, but can recover it subsequently from the state.

Statutory rights of parents and carers

13. What are the statutory rights of employees who are:

- Parents (including maternity, paternity, surrogacy, adoption and parental rights, where applicable)?
- Carers (including those of disabled children and adult dependants)?

Maternity rights

Maternity leave includes:

- Pregnancy leave, which starts between 45 and 28 days before the due date and lasts for three months after the birth.
- Childcare leave, which starts on the expiry of pregnancy leave.

Pregnancy leave and childcare leave jointly last 365 days and are fully compensated by the state. Employees are protected from termination during maternity leave.

Paternity rights
As an exception, the father can use the mother's maternity leave in certain specific cases, for example, if the mother abandons the child, dies or cannot use her maternity leave for a justified reason (such as illness, serving a prison sentence and so on).

Adoption rights
The adoptive parent of a child under the age of five is entitled to up to eight months of leave. During this period, the parent is entitled to compensation of salary.

Parental rights
One of the parents of a child who needs special care due to a serious psychological or physical sickness is entitled to absence from work or to work part-time until the child is five years of age. This leave is used on expiry of the maternity leave and childcare leave and is compensated by the state.

Carers' rights
A parent, a guardian or a person taking care of a person suffering from cerebral palsy, poliomyelitis, any type of paralysis or muscular dystrophy and other serious diseases, can work part-time on request, but must work at least half of the full-time working hours (*see Working hours*) (*Labour Law*).

Continuous periods of employment

14. Does a period of continuous employment create any statutory rights for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?

Statutory rights created
Employees acquire certain rights on the basis of their period of employment. Employees are entitled to a 0.4% increase in their basic salary for each year of employment with the same employer. The severance payment in the

case of redundancy is also calculated based on the employee's years of employment with a particular employer (*see Redundancy/layoff pay*).

Consequences of a transfer of employee
In the case of a transfer of employee, an employee's period of employment with the employer's related entities and preceding employers are taken into account to calculate increases in salary and any redundancy severance payment (*see above, Statutory rights created*).

Fixed term, part-time and agency workers

15. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees? To what extent are part-time workers entitled to the same rights and benefits as full-time workers?

Temporary workers
A fixed term employment agreement can be concluded for a period of time of up to 24 months, or longer in certain specific cases. Employees hired on this basis have the same rights and obligations as employees engaged for an unlimited period time.

In addition, individuals can be engaged outside of employment under agreements for temporary and occasional work. The maximum duration of these agreements is 120 working days per year. This type of engagement is much more flexible, and the persons engaged do not have the same statutory rights as regular employees.

Agency workers
In practice, employers also engage workers through agencies that provide outsourcing services. The Labour Law and other labour-related regulations do not regulate staff leasing, so that this matter remains a grey area in Serbia. The adoption of legislation regulating this issue is expected in the near future.

Part-time workers
An employment relationship can be established for part of the working hours. Part-time employees generally have the same rights as full-time employees, in proportion to the time spent at work.

Data protection

16. Are there any requirements protecting employee privacy or personal data? If so, what are an employer's obligations?

Employees' data protection rights

Employees, as data subjects, have a wide range of rights under the Serbian Constitution and the Data Protection Law (*Zakon o zaštiti podataka o ličnosti, Official Gazette of the Republic of Serbia No. 97/08, 104/09, 68/12, and 107/12*) and its accompanying decrees.

Generally, employees can expect a certain degree of privacy in the workplace, provided that they do not use work-related e-mail accounts and communication equipment for illegal purposes. Employees also have usual rights regarding the processing of personal data, including the rights to:

- Consent to any new type of data processing (that is, which exceeds the scope for which data was collected under the relevant law).
- Be informed of any third-party users.
- Withdraw their consent at any time (unless consent is implied under the relevant law).
- Request data controllers to allow them to access data relating to them.
- Correct, modify, update or delete personal data, as well as to request a cessation and suspension of personal data processing.

Currently, a new Data Protection Law is in the pipeline before the National Assembly. In general, this new piece of legislation has significantly used the EU General Data Protection Regulation (GDPR) as its role model.

Employers' data protection obligations

Data controllers, including employers, are responsible for registering existing collections of personal data and for announcing any new collection 15 days in advance (*Data Protection Law and accompanying decrees*). They must also:

- Obtain consent from their employees for the collection and processing of any personal data that are not covered by the relevant employment-related legislation.
- Afford a certain degree of privacy to employees in the workplace.
- Fulfil numerous formal obligations towards the Data Protection Authority, such as registration of certain data in the online registry and updating this data on a regular basis.

Data controllers and data processors must take all necessary technical, personnel and organisational measures in accordance with the established standards and procedures to (*Data Protection Law*):

- Protect data from loss, damage, destruction, unauthorised access, modification, disclosure and any other abuse.
- Ensure that all persons who work on data processing keep this data confidential.

Discrimination and harassment

17. What protection do employees have from discrimination or harassment, and on what grounds?

Protection from discrimination
The Labour Law strictly prohibits any direct or indirect discrimination against employees based on:

- Sex.
- Origin.
- Language.
- Race or colour of skin.
- Age.
- Pregnancy.
- Health status or disability.
- Nationality.
- Religion.
- Marital status.
- Family commitments.
- Sexual orientation.
- Political or other beliefs.
- Social background.
- Financial status.
- Membership of political organisations or trade unions.
- Any other personal quality.

Additionally, the Law on Prohibition on Discrimination (*Zakon o zabrani diskriminacije, Official Gazette of the Republic of Serbia No. 22/09*) prohibits any discrimination against employees in respect of their labour-related rights.

An employee who is a victim of discrimination can bring proceedings before either or both the:

- Commissioner for Protection of Equality.
- Courts.

The Commissioner for Protection of Equality can issue opinions on the existence of discrimination and make recommendations for adequate measures. If the defendant fails to comply with the proposed measures, the Commissioner can issue a warning letter, and finally inform the public if the defendant fails to comply with that warning. While there is no statute of limitations for proceedings before the Commissioner for Protection of Equality, the Commissioner can refuse to hear the claim, if the aim of the proceedings can no longer be achieved due to the time passed.

In court proceedings, an employee who believes he/she was a victim of discrimination can seek the following remedies from the court:

- Prohibition on the execution of the discriminatory act.
- Declaration that the employee was a victim of discrimination.
- Compensation of pecuniary and non-pecuniary damages.
- Publication of the court's decision.

Requests for the remedies above are not time-barred, except compensation of damages, which must be requested within three years from finding out about the damage and the person that caused the damage, and in any case not later than five years from the day when the damage occurred.

Protection from harassment

Protection from harassment at work is regulated by the Law on Preventing Harassment at Work (*Zakon o sprečavanju zlostavljanja na radu, Official Gazette of the Republic of Serbia No. 36/10*), which provides for the definition of harassment and regulates the obligations of both employers and employees in this respect. Except in cases where the responsible person at the employer is the alleged harasser (where direct court proceedings are available), the use of internal mediation proceedings is a legal prerequisite for bringing court proceedings.

The internal mediation proceedings must be finalised within a month from the date of appointment of the mediator. If mediation proceedings fail to resolve the dispute, an employee can request the court to:

- Determine that he/she was a victim of harassment.
- Prohibit further harassment.
- Order measures that will eliminate the effects of harassment.
- Order compensation for pecuniary and non-pecuniary damages.
- Order the publication of the court's decision.

The right to seek protection becomes time-barred on the expiry of a six-month period following the occurrence of the last act of harassment.

Whistleblowers

18. Do whistleblowers have any protection?

Whistleblowers benefit from protection under the Whistleblowers Protection Law (*Zakon o zaštiti uzbunjivača, Official Gazette of the Republic of Serbia No. 128/14*), which provides that an employer must not put a whistleblower in a less favourable position on the basis of internal whistleblowing.

A whistleblower is entitled to compensation for pecuniary and non-pecuniary damages that he/she suffered in relation to internal whistleblowing. Additionally, a whistleblower who was subjected to a harmful act in relation to internal whistleblowing has the right to judicial protection.

The same rights also apply to a:

- Person associated with the whistleblower.
- Person subjected to a harmful act after being mistaken for the whistleblower or for a person associated with the whistleblower.

Termination of employment

19. What rights do employees have when their employment contract is terminated?

Notice periods
The notice period in the case of unilateral termination by an employee cannot be shorter than 15 days, and not longer than 30 days. There is one exception regarding termination during probationary work. Prior to expiry of the time for which the probation work was contracted, the employer or the employee may terminate the employment agreement with a notice period which cannot be shorter than five working days.

In the case of unilateral termination by the employer, the notice period will depend on the particular ground for termination. Namely, if the employer decides to terminate the employee for failing to achieve work results (that is, where the employee does not have the required knowledge and competence for performing his/her tasks), the employee is entitled to a notice period of at least eight days and up to 30 days. This is the only termination ground that requires a notice period. There are no mandatory notice periods for other legal grounds of termination (that is, the employment relationship is terminated on the day when the decision on termination is duly delivered to the employee).

Severance payments
In the event of termination of employment due to redundancy, a severance payment is a prerequisite for the termination of employment and a mandatory condition for the validity of the decision on termination (*see Redundancy/layoff pay*). There are no mandatory severance payments in other cases of termination.

On retirement, employees have the right to a severance payment equivalent to two average salaries in Serbia.

Procedural requirements for dismissal
The procedural requirements for dismissal depend on the legal ground for dismissal. For example, if the employer terminates the employee due to an intentional breach of the work duty or the work discipline, the employer must issue a formal written warning letter stating:

- The grounds for termination.
- The relevant facts and evidence.
- A deadline for response within which the employee can respond to allegations, which cannot be less than eight days.

If the employee is a member of a trade union, this warning letter must also be delivered to the relevant trade union. On the employee's response or on expiry of the deadline for response, the employer can issue the decision on unilateral termination of employment. The decision must be delivered to the employee in person.

A court can declare that termination is illegal if the employer fails to comply with the applicable procedural requirements.

20. What protection do employees have against dismissal? Are there any specific categories of protected employees?

In Serbia, employees are strongly protected against dismissal. An employer can only dismiss an employee on the basis of the following grounds (*Labour Law*):

- Failure to achieve work results, that is, where the employee does not have the required knowledge and competence for performing his/her tasks (incompetence).
- Work-related criminal act.
- Failure to return to work within 15 days after the expiry of unpaid leave or stay of employment.
- Intentional breach of a work duty.
- Breach of the workplace discipline.
- Technological, economic or organisational changes within the employer (redundancy) (*see Question 21*).
- Refusal of the employee to add an annex to the employment agreement for certain specific reasons.

Protection against dismissal
There are several types of protection against dismissal. Employees are protected from dismissal during:

- Pregnancy.
- Maternity leave.
- Childcare leave.
- Special childcare leave.

Additionally, an employer cannot dismiss an employee due to:

- His/her status.
- Activities performed in the capacity of employees' representative.
- Membership of a trade union or participation in trade union activities.

Protected employees
Certain categories of employees are specially protected. For example, female employees enjoy protection during maternity leave. Employees with disabilities also have certain special rights. Trade union representatives and employees' representatives are also a protected category.

Redundancy/layoff

21. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs? Are there special rules relating to collective redundancies?

Definition of redundancy/layoff
Redundancy is one of the legal grounds for termination of employment. Redundancy occurs when the need for performing certain work ceases or is diminished due to economic, organisational and/or technical changes that take place at the employer. Depending on the number of employees that will be made redundant, the employer may be obliged to implement the redundancy programme (*see below, Collective redundancies*).

Procedural requirements
The procedural requirements include the following:

- Adopting the decision on redundancy.
- Implementing the redundancy programme, if applicable (*see below, Collective redundancies*).
- Amending the rules on organisation and systematisation of work posts (that is, a general enactment that sets out all the work posts within the employer, which must be changed if certain work posts are terminated due to redundancy).
- Adopting the individual decisions on termination of employment.

In the case of redundancy, the employer cannot employ another person for the same position before the expiry of three months from the date of dismissal, subject to certain exceptions.

Redundancy/layoff pay
In the case of termination of employment due to redundancy, a severance payment is mandatory.

The amount of the severance payment cannot be lower than the sum of one third of the employee's salary for each full year of employment with the particular employer. When determining the amount of the severance payment, the years of employment with the employer's related entities and preceding employers (in the case of a transfer of employees) are also taken into account. The minimum amount of severance payment guaranteed by the Labour Law is not taxable.

Collective redundancies
A collective redundancy exists when, due to technological, economic or organisational changes, the employer decides to terminate within a period of 30 days the employment agreements of at least:

- Ten employees, if the employer has more than 20 and less than 100 permanent employees.
- 10% of employees, if the employer has between 100 and 300 permanent employees.
- 30 employees, if the employer has more than 300 permanent employees.

In the event of a collective redundancy, the employer must implement the redundancy programme. The employer must also implement the redundancy programme if it determines that at least 20 permanent employees will be dismissed within a period of 90 days, regardless of the total number of employees.

The redundancy programme is rather formal and includes certain procedural steps (for example, drafting a programme that contains all the mandatory elements set out in the Labour Law, seeking the representative trade union's opinion on the draft programme and so on). This programme is adopted in co-operation with the National Employment Agency.

Employee representation and consultation

22. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What does consultation require? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management representation
There are no legal requirements relating to employees' right to management representation and participation. When the employer has more than 50 employees, employees can set up a work council, which is a body that provides

opinions and participates in deciding on employees' social and economic rights. However, work councils are rather rare in practice.

Consultation
Under the Labour Law, trade unions have certain general and specific consultation rights. Each representative trade union within the employer must be consulted in the following cases:

- Introduction of night work at the employer.
- Adoption of the redundancy programme (*see Question 21*).

Representative trade unions must be informed of the:

- Introduction of part-time work.
- Reasons for continuing to pay the minimum wage on expiry of a six-month period after its introduction.
- Reasons for the continuation of any forced paid leave.

Major transactions
The employer must inform representative trade unions about any status change (for example, acquisition, merger, division or separation) and/or change of employer in due course, that is, no later than 15 days before the envisaged change. The former and the successor employer must co-operate with the representative trade unions in taking the measures to improve the social and economic consequences of the change on employees, within 15 days before the envisaged change.

23. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies
There are no direct remedies if an employer fails to comply with its consultation duties. However, the employees can initiate proceedings before the Labour Inspection, which is the state body responsible for supervising the implementation of the Labour Law and other employment-related regulations. The Labour Inspection can initiate misdemeanour proceedings against an employer that fails to comply with a correction order.

Employee action
There are no available actions that employees can take to prevent any proposals going ahead.

Consequences of a business transfer

24. Is there any statutory protection of employees on a business transfer?

Automatic transfer of employees
In the event of a change of employer or change of status of the employer, all employees must be informed in writing about the transfer of their employment agreements to the successor employer. The preceding employer can terminate the employment agreement of an employee who refuses the transfer or fails to respond within five working days from the date of receipt of the relevant notice. The successor employer must comply with the existing individual collective agreement or work rules for at least one year following the transfer.

Under the latest amendments of the Labour Law, a change of ownership (control) over the company is not considered as a change of employer.

Protection against dismissal
The general rules on protection against dismissal apply (*see Question 20*).

Harmonisation of employment terms
The successor employer must comply with the existing individual collective agreement or work rules for at least one year following the transfer. On expiry of this one-year period, the successor employer can unilaterally change the terms of employment set out in these instruments. The terms of any individual employment agreement can only be changed through the conclusion of an annex to the agreement, in accordance with the procedure set out in the Labour Law.

Employer and parent company liability

25. Are there any circumstances in which:

- An employer can be liable for the acts of its employees?
- A parent company can be liable for the acts of a subsidiary company's employees?

Employer liability

The employer is liable for any damage caused by its employees to third parties in the course of their work, or which is related to their work, except where the employer proves that the employee acted in the appropriate manner. The employer can seek compensation from an employee that caused damage to a third party intentionally or with gross negligence.

Parent company liability
A parent company is not liable for the acts of a subsidiary company's employees.

Employer insolvency

26. What rights do employees have on the insolvency of their employer? Is there a state fund which guarantees repayment of certain employment debts?

Employee rights on insolvency
On the employer's insolvency (including both bankruptcy and restructuring), the following monetary claims of employees rank in priority and must be paid after settlement of the costs of the bankruptcy procedure:

- Unpaid net salaries in the amount of the minimum wage for the period of one year before the opening of the bankruptcy procedure.
- Unpaid contributions for pension and disability insurance within the two years preceding the opening of the bankruptcy procedure.

Apart from the general rules regarding employees' monetary claims, which are set out in bankruptcy legislation, employment-related regulations provide certain additional protection for employees (for example, the right to compensation of damages due to a work injury or an occupational illness based on a court decision issued in the same year as the opening of the bankruptcy procedure).

In an insolvency procedure, the employees can participate in the board of creditors.

State guarantee fund
Employees are often deprived of their rights on insolvency due to the lack of available funds from the bankruptcy debtor. This prompted the creation of the Solidarity Fund, which is a state fund aimed at satisfying certain pecuniary claims of employees from the budget of Serbia, if these claims are not settled by the bankrupt employer.

Health and safety obligations

27. What are an employer's obligations regarding the health and safety of its employees?

The employer's health and safety obligations are numerous and contained in various labour-related regulations. Generally, the employer must implement health and safety measures for each work post, to ensure a safe working environment for its employees. The employer must (among other things):

- Insure its employees against work-related injuries, professional illnesses and work-related diseases.
- Appoint a person responsible for safety and health at work.
- Adopt a general act regulating the rights, obligations and responsibilities in the area of health and safety at work (only applicable to employers with more than ten employees).
- Adopt a risk assessment act for all work posts.
- Maintain and store various health and safety records.

Taxation of employment income

28. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Foreign nationals
Foreign nationals working in Serbia are generally subject to taxation in the same manner as Serbian nationals. The tax rate is 10% of the employee's salary. Double taxation treaties may also be relevant, depending on the foreign national's domicile state.

Nationals working abroad
Employees assigned to temporary work abroad must pay salary tax at the same rate as Serbian residents. The basis for taxation is the salary that the assigned employee would have received if he/she had worked in Serbia in the same or a similar work post. Different rules may apply under the relevant double taxation treaty.

29. What is the rate of taxation on employment income? Are any social security contributions or similar taxes levied on employers and/or employees?

Rate of taxation on employment income
The rate of taxation on employment income is 10%. The basis for taxation is the salary, reduced by a monthly non-taxable amount of RSD15.000 if the employee works the full-time working hours.

Social security contributions
Social security contributions are also mandatory and based on the employee's registered income. The rates are as follows:

- Mandatory pension and disability insurance: 14% paid by the employee and 12% paid by the employer.
- Mandatory health insurance: 5.15% paid by both the employee and the employer.
- Unemployment insurance: 0.75% paid by both the employee and the employer.

Bonuses

30. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded, whether generally or in particular sectors?

Bonuses are defined as earnings based on the contribution to the employer's success, and they are generally considered to be part of the salary and are therefore taxable in the same manner as salary (*see Question 29*). Bonus schemes are rather common, but are not regulated by the Labour Law or other regulations, so they are introduced at the level of the employer.

Intellectual property (IP)

31. If employees create IP rights in the course of their employment, who owns the rights?

If an employee creates IP rights in the course of performing his/her duties, the employer owns the exclusive pecuniary rights for the exploitation of the work within the scope of the employer's registered business activity for a period of five years from completion of the work. The employer's general act or the individual employment agreement can provide otherwise. The employee who created the IP rights is generally entitled to a special remuneration.

If the IP rights relate to a computer program, the permanent holder of all exclusive pecuniary rights in the program is the employer, unless the employment agreement provides otherwise.

Restraint of trade

32. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Restriction of activities
The employment agreement can specify the jobs that an employee cannot perform on his/her own behalf, or on behalf and for the account of another legal entity or natural person, without the employer's consent.

A non-compete obligation can only be agreed where an employee may, through his/her work with the employer, acquire any of the following:

- New, especially important technological knowledge.
- A wide circle of business partners.
- Knowledge of important business information and secrets.

The territorial validity of the prohibition of competition, depending on the type of activity which is subject to that prohibition, is also determined by the work rules or the individual employment agreement.

Post-employment restrictive covenants
A non-compete obligation can last for a maximum period of two years after termination of the employment relationship. If so, the employer must pay the former employee monetary compensation in the amount agreed in the employment agreement.

Relocation of employees

33. Can employers include mobility clauses in employment contracts, or take any other measures, to ensure that employees are obliged to relocate?

Under the Labour Law, the transfer of employees to another place of work is allowed only under certain conditions. The transfer of employees to another place of work is allowed without the employee's previous consent provided that:

- The employer's business is of such a nature that the work is performed in places outside the employer's registered seat
- The employer has organisational units where the employees will work, and the distance from the employee's regular place of work to the place where he/she is to be transferred is less than 50 kilometres.
- Regular transportation which enables the timely arrival to work and return from work is organised by the employer, or the costs of transportation are refunded to the employee by the employer.

Provided the above conditions are met, standard mobility clauses can be introduced.

In all other cases, the employee's transfer is only possible with the employee's consent. Such changes to the place of work are made through a respective annex to the existing employment agreement.

Proposals for reform

34. Are there any proposals to reform employment law in your jurisdiction?

In general, the Labour Law was significantly amended in 2014, but new amendments are also expected, mainly as a part of the process of harmonisation of local legislation with EU legislation.

It is expected that a new law on strikes will be adopted by the end of 2018. The draft law on strikes is currently in the procedure for adoption before the National Assembly. Further, a law regulating staff leasing is also expected to be adopted, since this matter is still a grey area of law (however, the timing is uncertain). There are also continuing public debates and government announcements regarding the possibility of reducing tax rates and social security contributions on salary payments.

Online resources

Ministry of Labour, Employment, Veterans and Social Matters
W *www.minrzs.gov.rs/cir/dokumenti/rad/zakoni*

Description. This is the official website of the Ministry of Labour, Employment, Veterans and Social Matters, which contains most of the regulations mentioned in this Q&A. These regulations are in Serbian only, and there are no official translations.

Contributor profiles

Vuk Draskovic, Partner

Bojovic Draskovic Popovic & Partners

T +381 11 7850 336
F +381 11 7850 337
E *vuk.draskovic@bd2p.com*
W *www.bd2p.com*

Professional qualifications. Serbia, Attorney at law

Areas of practice. Employment law; corporate and commercial law; regulatory; mergers and acquisitions.

Non-professional qualifications. LLM – Professional Legal Practice (International Legal Practice), University of Law, UK (graduated with Distinction, and his final LLM dissertation was dedicated to the

relationship between English law as the governing law in foreign international M&A transactions and other relevant laws); LLB, Faculty of Law, University of Belgrade.

Languages. English

Professional associations/memberships. Serbian Bar Association (for more than ten years); frequently participates in various activities of the Foreign Investors Council, including drafting the relevant sections of the White Book of the Foreign Investors Council (the most prominent annual analysis of the legal framework in Serbia); one of the leaders of the regional legal network SELA (South East Legal Alliance) (actively participated in forming this network in 2016).

Publications.

- *Thomson Reuters, Employment and Employee Benefits in Serbia: overview (October 2016).*
- *Global Legal Group, The International Comparative Legal Guide to: Outsourcing 2016 (Serbia and Montenegro chapters).*
- *The Lawyer, Latest amendments to the Labour Law (October 2014).*

Milos Rubezic, Associate

Bojovic Draskovic Popovic & Partners

T +381 11 7850 336
F +381 11 7850 337
E *milos.rubezic@bd2p.com*
W *www.bd2p.com*

Professional qualifications. Serbia, Associate

Areas of practice. Employment law; data protection; dispute resolution; corporate and commercial matters.

Non-professional qualifications. LLM, Master in the field of employment and social insurance, Faculty of Law, University of Belgrade; LLB, Faculty of Law, University of Belgrade.

Languages. English

Professional associations/memberships. Serbian Bar Association; HR Committee, Foreign Investors Council.

Publications.

- *International Labour Organization's Fundamental Conventions and Compliance of the Current Legislation of the Republic of Serbia with Their Norms, Herald of the Bar Association of Vojvodina, Journal of Legal Theory and Practice, Bar Association of Vojvodina, Novi Sad (June 2016).*
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