Employment and Employee Benefits in Serbia: Overview

by Vuk Drašković and Miloš Andrejević, Bojović Drašković Popović & Partners

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

This Q&A gives a high-level overview of the key practical issues including: the scope of employment regulation; employment status; background checks; regulation of the employment relationship (including unilateral changes by an employer to the terms and conditions of employment); minimum wage and bonuses; working time, holidays and flexible working; illness and injury of employees; rights created by continuous employment; provisions for fixed-term, part-time and agency workers; discrimination and harassment; termination of employment (including protection against dismissal and protected employees); resolution of disputes between an employee and employer; redundancy/layoff; employee representation and consultation; consequences of a business transfer; employer and parent company liability; employer insolvency; employers' health and safety obligations; taxation of employment income; intellectual property; restraint of trade; and relocation of employees.

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, Nos. 128/14, 113/17, 50/18, 31/19 and 62/23*). The Labour Law (*Zakon o radu, Official Gazette of the Republic of Serbia, Nos. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17, 113/17 and 95/18*) and other local regulations also apply to the employment of foreign nationals in Serbia. Bilateral tax and social security treaties may also be relevant to foreign nationals, depending on their state of domicile.

Laws Applicable to Nationals Working Abroad

Where employees are seconded from Serbia to work in another country, the Law on Conditions for Secondment of Employees to Temporary Work Abroad and their Protection (*Zakon o uslovima za upu#ivanje zaposlenih na privremeni rad u inostranstvo i njihovoj zaštiti, Official Gazette of the Republic of Serbia, Nos. 91/15 and 50/18*) regulates the status of Serbian nationals working abroad. This law does not directly impose Serbian employment/taxation legislation on nationals of Serbia who work abroad. In general, employees seconded to temporary work abroad must still pay income tax in Serbia at the same rate as Serbian residents. The basis for taxation is the salary that the assigned employee would have received if that employee had worked in Serbia in the same or a similar work post. Bilateral tax and social security treaties are also relevant where these treaties exist between Serbia and the state in which a Serbian national is seconded. If the Republic of Serbia has such treaty with the state in which a Serbian national is seconded, the provisions of this treaty will apply. In addition, where a seconded employee is insured according to the law of the state to which that employee is seconded, social contributions will not be calculated or paid in the Republic of Serbia.

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

Employee/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 Law on Simplified Employment of Seasonal Workers in Certain Activities (*Zakon o pojednostavljenom radnom angažovanju na sezonskim poslovima u odre#enim delatnostima, Official Gazette of the Republic of Serbia, No. 50/18*) introduced seasonal jobs in the sector of agriculture, forestry and fisheries. These seasonal jobs can last for a maximum of up to 180 days within a calendar year.

Independent contractor/self-employed. On 6 December 2019, the National Assembly of the Republic of Serbia adopted the Law on Amendments to the Law on Personal Income Tax (*Zakon o izmenama i dopunama Zakona o porezu na dohodak gra#ana, Official Gazette of the Republic of Serbia, No. 86/19*). This law amended the system of flat-rate taxation of selfemployed income, and the law now explicitly states that the term "other income" means (among other things) remuneration received by an entrepreneur on the basis of carrying out activities for the same principal (a domestic or a foreign legal entity), provided that the entrepreneur fulfils at least five of nine criteria in the test of independence introduced by Article 85 of the law. Where the entrepreneur does not meet five of the criteria, the general taxation regime that applies to self-employed persons will continue to apply.

This test determines whether the entrepreneur earns income from self-employment or whether they are actually employed. If the entrepreneur meets at least five of the criteria, they will not be considered as independent for income tax purposes, and the income this entrepreneur receives will be taxed as "other income" in accordance with Article 85 of the Law on Personal Income Tax. Further, the contributions for pension and disability insurance will be also calculated on this other income, as well as the health insurance contributions, if the entrepreneur is not insured under another basis. The test of an entrepreneur's independence has been applicable since 1 March 2020.

If the Tax Authority retroactively establishes that the entrepreneur did not pass the test of independence, the local employer/company is formally responsible for paying the difference in taxes and contributions, since it is a withholding tax. This is because withholding tax must be charged and paid on other revenues if the payer of revenue is a legal entity, sole proprietor or sole proprietor subject to lump-sum taxation.

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. Statutory employment rights are mainly reserved only for employees, whereas other workers have much more limited protection.

Time Periods

There are limitations on the time periods that certain workers can work where they are employees who have been engaged for a limited period of working time, as well as on workers engaged for temporary and occasional work (see above, *Categories of Worker*).

Background Checks

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

Restrictions/Prohibitions on Conducting Background Checks

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 their

family and marital status and family planning, or any other documents and/or evidence that is not directly relevant to the position for which the job application was made.

In addition, both direct and indirect discrimination of jobseekers/employees which is based on any of the following reasons is prohibited:

- Gender.
- Birth.
- Language.
- Race.
- Colour of skin.
- Age.
- Pregnancy.
- Health condition (disability).
- Ethnic origin.
- Religion, marital status, family obligations, sexual orientation, political or other belief, or social background.
- Financial status.
- Membership to political organisations or trade unions.
- Any other personal characteristic.

If, for example, the employment agreement is not concluded due to the existence of a previous conviction or the health condition of a potential employee, the employer's conduct may be considered as an act of discrimination. In such a case, the employer's activities may also trigger the application of the Law on Personal Data Protection (*Zakon o zaštiti podataka o li#nosti, Official Gazette of the Republic of Serbia, No. 87/18*), particularly where the data relied upon by the employer concerns an applicant's health, which represents a special category of personal data.

In general, conducting background checks/screening of potential employees is not standard practice in Serbia, but there are no direct restrictions in this respect other than the rules against discrimination and concerning the application of the data protection laws, as outlined above.

Background Checks by Third Parties

There are no direct restrictions on a third party carrying out background checks on behalf of the employer, provided that the third party complies with the anti-discrimination and data protection laws (see above, *Restrictions/Prohibitions on Conducting Background Checks*).

Regulation of the Employment Relationship

4. How is the employment relationship governed and regulated?

Written Employment Contract

A written employment agreement must be concluded with each employee. Under the Labour Law, there are 13 mandatory elements that must be included in an employment agreement, including the:

- 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. The provision of versions of the employment agreement in other languages (in addition to the Serbian language version) is 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. Any 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 collective agreements.
- Special (industrial) collective agreements.
- General collective agreements.

An individual collective agreement is concluded at the level of the employer, between the employer and a representative trade union at the employer, and applies to the employer and employees who are members of the representative trade union. Employers that do not conclude individual collective agreements instead usually regulate employment-related matters through work rules.

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

5. 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 to the employment agreement that has been agreed between the employer and the employee, in accordance with the detailed procedure set out in the Labour Law.

However, an employer that has adopted work rules (that is, a general unilateral enactment that regulates employment-related matters (see *Question 4, Collective Agreements*)) can unilaterally amend those work rules, including the terms and conditions of employment prescribed within those rules.

Minimum Wage and Bonuses

6. Is there a national (or regional) minimum wage? Is it common to reward employees through contractual or discretionary bonuses?

Minimum Wage

The minimum wage in Serbia was set at RSD230.00 (net) per hour for the time period from January 2023 until December 2023, and the current minimum wage in Serbia for the time period from January 2024 until December 2024 is set at RSD271.00 (net) per hour. The minimum wage applies to all employees. The minimum wage for an employee for one month's salary depends on the number of working days in the respective month (for example, for June 2023, the minimum wage for an employee was RSD40,480.00 (net), approximately EUR345).

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

Bonuses

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 23*). Bonus schemes are rather common, but they are not specifically regulated by the Labour Law or other regulations, so they are introduced at the level of the employer and are therefore provided at the employer's discretion.

Working Time, Holidays and Flexible Working

7. Are there restrictions on working hours, and if so, can an employee opt out? Is there a minimum paid holiday entitlement? Is there a statutory right for employees to request to work flexibly?

Working Hours

Restrictions on working hours. The maximum working hours per day and per week are set out in the Labour Law. The maximum full-time working hours are 40 hours per week (not including overtime). Overtime can be worked, but overtime work cannot exceed more than eight hours per week, and an employee cannot work for more than 12 hours in one day (including any overtime work).

Overtime pay. Any work done in excess of the full-time working hours outlined above is considered as overtime work, which must be additionally compensated by the employer. Under the Labour Law, an employee is entitled to an increased salary for overtime work in the amount determined by the employer's work rules and the individual employment agreement, which cannot be lower than an additional 26% of the employee's base salary (per hour). An employee cannot opt out of the mandatory legal regime regulating overtime work.

Special restrictions applicable to shift workers. If the work is organised in shifts that include night work, the employer must provide for the alternation of shifts, so that the employee does not work during the night for more than one working week. An employee can only work for a night-time shift for more than one working week where they have provided their written consent to do so.

Rest Breaks

Rest breaks during the working day. Employees are entitled to a minimum of a 30-minute rest break during daily working hours.

Rest periods between working days. Employees are entitled to a minimum of:

- A daily rest period of at least 12 hours.
- A weekly rest period of at least 24 hours.

Special provisions for night/shift work. There are no special provisions concerning rest breaks or rest periods for night/shift work and the provisions outline above apply.

Holiday Entitlement

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 any relevant individual collective agreement, the work rules or the employment agreement (as applicable). 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 agreement (as the case may be). The minimum amount of the respective allowance is not determined by the Labour Law.

Public holidays. In 2023, there were 13 public holidays in Serbia, and in 2024 there are 12 public holidays in Serbia. The number of public holidays varies each year, depending on any overlap between holidays and weekends or, as the case may be, between two holidays (for example, Easter holidays and May Day). If a public holiday occurs on Sunday, the next working day is a non-working day. During public holidays, employees are entitled to paid leave which is based on their average salary in the preceding 12 months.

Flexible Working

In general, the Labour Law does not explicitly provide for an employee's right to request to work flexibly. However, the Labour Law prescribes that if the nature of work and the organisation of work allow it, flexible working hours can be agreed between the employer and the employee. The scheduling of working hours within a working week are freely regulated by the employer, subject to certain restrictions regarding working hours, rest breaks, rest periods and so on.

The Labour Law also stipulates that the employee and the employer can agree that the employee spends a part of their contracted working hours working from home. In addition, the Labour Law generally recognises work outside of the employer's premises. The employment relationship can include situations where an employee performs activities outside the employer's premises, which can include both remote work and working from home. Where such an employment relationship is established, the Labour Law allows for this different working regime to be set out in specific additional terms that are included in the employment agreement.

Illness and Injury of Employees

8. 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

Employees are generally entitled to sick pay any time they are sick or injured, without limitation. An employee is obliged, not later than within three days of the day that the employee became temporarily unable to work under the health insurance regulations, to deliver to the employer a medical certificate issued by a physician certifying their inability to work and the expected duration of the period of sick leave. During the first 30 days of sick leave, the employee receives sick pay amounting to either:

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

The employer pays sick pay during the first 30 days of sick leave. After that period, sick pay is still paid by the employer, but can then be recovered by the employer from the state. There are no limitations on the total duration of sick leave, or on the total amount of sick pay, that an employee can claim, provided that the employer has been provided with a medical certificate covering the period of time off.

Entitlement to Unpaid Time Off

Any sick leave taken by an employee automatically triggers a right to be paid sick pay.

An employer can, at its own discretion, grant an employee leave without compensation of salary (unpaid leave). During the time of unpaid leave, the rights and duties relating to employee's employment relationship will be dormant, unless otherwise determined by the law, the work rules and/or the individual employment agreement. The cases for which the employer can grant unpaid leave, as well as the duration of any unpaid leave, are not specifically determined by the Labour Law. Unpaid leave is usually granted to an employee where the employee has familial or personal obligations that require the employee to be temporarily absent from work. In practice, an employee will usually submit a request for unpaid leave to the employer, and the employer decides on this request at its own discretion, taking into account the needs of the business and its own working processes.

Recovery of Sick Pay from the State

After the first 30 days of sick leave, the employer continues to pay the sick pay, but can then recover any further amounts paid as sick pay from the state.

Provisions Concerning COVID-19

There have been no new emergency provisions as a result of COVID-19, and the relevant provisions of the Labour Law and the Law on Health Insurance (*Zakon o zdravstvenom osiguranju, Official Gazette of the Republic of Serbia, Nos. 25/2019 and 92/2023*) concerning sick leave/sick pay also apply to employees who have COVID-19. In addition, employees who are furloughed as a result of COVID-19 are entitled to the same provisions concerning sick pay as employees on sick leave.

Rights Created by Continuous Employment

9. 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 *Question 15, 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 retained and 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

10. 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 generally only be concluded for a period of up to 24 months (this can be for a longer period only in certain specified cases). Employees hired on this basis have the same rights and obligations as employees engaged for an indefinite time period.

In addition, individuals can be engaged 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 these workers do not have the same statutory rights as employees who are employed for an indefinite time period.

Under the Labour Law, an employment relationship concluded for a fixed term is an exemption from the usual rules applicable to employment relationships, since an employment relationship is usually concluded for an indefinite time period. A fixed-term employment agreement may be considered as an employment agreement for an indefinite term if the employer fails to obey the provisions of the Labour Law which regulate fixed-term employment agreements.

The tax regime for independent contractors is also very different from that applied to indefinite term employees.

Agency Workers

Employers can also engage workers through agencies that provide outsourcing services. On 6 December 2019, the National Assembly of the Republic of Serbia adopted the Law on Agency Employment (*Zakon o agencijskom zapošljavanju, Official Gazette of the Republic of Serbia, No. 86/19*), which represented a positive and significant legal development to employment law in Serbia as this had previously been quite a grey area. The Law on Agency Employment has been applicable since 1 March 2020 (except for the provisions governing the agencies' conditions of work, which have been applicable since 1 January 2020). This law aligns Serbian labour legislation with the international standards of the International Labour Organization (ILO) and the EU.

Agency employees are now guaranteed equal salaries and other working conditions (working hours, sick leave/pay, holiday entitlements/pay, health and safety at work and so on) that are applicable to employees directly employed by the employer. Therefore, agency employees now enjoy the same working conditions and benefits as regular comparable employees doing the same job.

The Law on Agency Employment also contains certain restrictions which aim to prevent any abuse of the use of fixed-term employment contracts. One of these restrictions is that fixed-term employment contracts can only be used to engage a maximum of 10% of the total number of employees employed directly by the employer at the time of conclusion of the contract. However, this restriction does not apply to employees outsourced to an employer who have indefinite employment contracts with an agency.

Part-Time Workers

Part-time employees generally have the same rights as full-time employees, in proportion to the time spent at work.

Discrimination and Harassment

11. 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 which is 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 to 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, Nos. 22/09 and 52/21*) 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 the Protection of Equality.
- Courts.

The Commissioner for the Protection of Equality can, among other things, 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 the Protection of Equality, the Commissioner has the discretion to refuse to hear the claim if, among other things, the aim of the proceedings can no longer be achieved due to the length of the time that has passed.

In court proceedings, an employee who believes they are 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.
- Take action to mitigate the consequences of the discriminatory behaviour.
- Compensation of pecuniary and non-pecuniary damages.
- Publication of the court's decision.

Requests for the remedies above are not time-barred, except for claims for compensation of pecuniary and non-pecuniary damages, which must be requested either:

- Within three years from the date the claimant discovers the damage, and the person responsible for causing the damage.
- Within five years from the date that the damage occurred.

Protection from Harassment

Protection from harassment at work is regulated by the Law on Preventing Harassment at Work (*Zakon o spre#avanju 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 they were a victim of harassment.
- Prohibit further harassment.
- Order measures that will eliminate the effects of the 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.

Termination of Employment

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

Notice Periods

The notice period in the case of unilateral termination of employment 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 can terminate the employment agreement with a notice period which cannot be shorter than five working days.

In the case of unilateral termination of employment by the employer, the notice period will depend on the particular ground for termination. Where the employer decides to terminate the employment on the ground that the employee failed to achieve certain work results (that is, incompetence, where the employee does not have the required knowledge and/or competence to perform the tasks required of the job), the employee is entitled to a notice period which should be determined by the work rules or the individual employment agreement (depending on the length of social insurance coverage), but which cannot be shorter than eight days or longer than 30 days. This is the only ground for termination of employment that requires a notice period. There are no mandatory notice periods for other legal grounds of termination of employment (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 the employment and a mandatory condition for the validity of the decision to terminate the employment (see *Question 15, Redundancy/Layoff Pay*). There are no mandatory severance payments in any other cases of termination of employment.

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

Procedural Requirements for Dismissal

The procedural requirements for dismissal depend on the legal ground for dismissal. In most cases, employment can be terminated on the same date as a decision on termination is made, though a notice period must be provided for termination of employment due to incompetence (see above, *Notice Periods*). If the employer terminates the employment due to the employee's intentional breach of a work duty or a work rule, the employer must issue the employee with a formal written warning letter about the termination of employment which states:

- The grounds for termination.
- An outline of the relevant facts and the evidence concerning the breach of the work duty/work rule.
- A deadline for the employee's response, within which time the employee can respond to the allegations raised in the written warning letter (the time period for a response cannot be less than eight days).

If the employee is a member of a trade union, this written warning letter must also be delivered to the relevant trade union. On receipt of the employee's response, or on expiration of the deadline for a 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 the termination of employment is illegal if the employer fails to comply with these procedural requirements.

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

Protection Against Dismissal

Grounds for dismissal. Employees are generally protected against dismissal in Serbia. An employer can only dismiss an employee on one of the following legal grounds for termination of employment (*Labour Law*):

- An employee's failure to achieve certain work results (that is, incompetence, where the employee does not have the required knowledge and/or competence to perform the tasks required of the job.
- The commission by an employee of a work-related criminal act.
- An employee's failure to return to work within 15 days after a stay of employment or another period of permissible leave.
- An employee's intentional breach of a work duty or a work rule.

- Technological, economic or organisational changes within the employer (redundancy) (see *Question 15*).
- An employee's refusal to add an annex to the employment agreement (only for certain specified reasons).

Procedural requirements for dismissal. See *Question 12, Procedural Requirements for Dismissal.*
Prerequisites to qualify for 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 purely on the basis of:

- The employee's social status.
- The employee performance of activities in their capacity as an employees' representative.
- The employee's 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. For example, the employer is obliged to enable an employee with a disability or a particular health condition to perform their work according to their work ability, in accordance with the law. Trade union representatives and employees' representatives are also a protected category of employee and cannot be dismissed purely on the basis of performance of their duties as such representatives.

Resolution of Disputes Between an Employee and Employer

14. Is there a governmental or independent organisation to which employees can refer complaints in the event that there is a dispute between the employee and the employer?

The Law on Amicable Resolution of Labour Disputes (*Zakon o mirnom rešavanju radnih sporova, Official Gazette of the Republic of Serbia, Nos. 125/2004, 104/2009 and 50/2018*) stipulates the method and procedure for the amicable resolution of collective and individual labour disputes, and includes the rules concerning the selection of, and the rights and duties of, both conciliators and arbiters and other issues relevant for the resolution of labour disputes. The Republic Agency for Peaceful

Settlement of Labour Disputes (Labour Disputes Agency) (*https://www.ramrrs.gov.rs/en*) is an organisation specifically established for the amicable resolution of both collective and individual labour disputes.

The resolution procedure for labour disputes is initiated by filing a motion to the Labour Disputes Agency. Parties to the dispute can file a motion jointly or individually and must provide documentation regarding the subject matter of the dispute, as well as the names of witnesses (if any). A conciliator or arbiter is selected jointly by the parties from a directory held by the Labour Disputes Agency. If the parties fail to agree on a conciliator or arbiter, the Director of the Labour Disputes Agency will appoint one. These types of arbitration proceedings are concluded either by the parties reaching an agreement between themselves as result of the arbitration, or by the conciliator/arbiter imposing a decision on the parties on the facts of the case. If the arbitration proceedings become frustrated (for example, because the parties cannot reach any agreement or the conciliator/arbiter cannot impose any decision), the proceedings are terminated without resolution in accordance with rules contained in the Law on Amicable Resolution of Labour Disputes.

Redundancy/Layoff

15. 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 to perform certain work ceases or is diminished as a result of economic, organisational and/or technical changes that take place at the level of the employer. Depending on the number of employees that will be made redundant, the employer may be obliged to implement a redundancy programme (see below, *Collective Redundancies*).

Procedural Requirements

The procedural requirements include the following:

- Adopting the decision on redundancy.
- Implementing a redundancy programme, if applicable (see below, *Collective Redundancies*).
- Amending the rules on the 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 the dismissal, subject to certain limited exceptions.

Redundancy/Layoff Pay

In the case of termination of employment due to redundancy, it is mandatory to provide employees who have been made redundant with a severance payment. 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 that the employee has attained with the relevant 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 the severance payment guaranteed by the Labour Law is not taxable.

Collective Redundancies

A collective redundancy exists when, due to technological, economic or organisational changes that occur at the level of the employer, 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 a redundancy programme. The employer must also implement a 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.

A 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

16. 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 concerning employees' rights to management representation and participation. Where an employer has more than 50 employees, employees can set up a works council, which is a body that provides opinions and participates in decisions that concern employees' social and economic rights. However, works councils are very rarely seen in practice.

Consultation

Under the Labour Law, trade unions have certain general and specific consultation rights. Each representative trade union within any specific employer must be consulted where there is the:

- Introduction of night work at the employer.
- Adoption of a redundancy programme (see *Question 15*).

Representative trade unions must also be informed of the:

- Introduction of part-time work.
- Reasons for continuing to pay no more than the national 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 any representative trade union(s) about any status change (for example, an 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 union(s) in taking the measures necessary to improve the social and economic consequences of the change on employees (again, within at least 15 days before the envisaged change).

17. 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 available to employees where an employer fails to comply with its consultation duties. However, 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 from going ahead.

Consequences of a Business Transfer

18. Is there any statutory and/or common law 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. Employment agreements are not automatically transferred, and each employee must agree to the transfer of their employment. However, 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. Employees who agree to the transfer still retain their period of service under the preceding employer with the successor employer. The successor employer must also comply with any 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 to constitute a change of employer.

Protection Against Dismissal

The general rules on protection against dismissal apply (see *Question 13*).

Harmonisation of Employment Terms

The successor employer must comply with any 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

19. 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 generally liable for any damage caused by its employees to third parties in the course of their work, or in the course of conducting activities which are related to their work, unless the employer can prove that the employee acted without any negligence. 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

20. 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, employmentrelated regulations provide certain additional protection for employees (for example, the right to 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.

Under the Bankruptcy Law (*Zakon o ste#aju, Official Gazette of the Republic of Serbia, Nos. 104/2009, 99/2011, 71/2012, 83/2014, 113/2017, 44/2018 and 95/2018*), the opening of bankruptcy proceedings is deemed as a just cause for the termination of employment agreements concluded between the debtor (employer) and its employees. The bankruptcy administrator will make the decision concerning the termination of any employment agreements.

State Guarantee Fund

Employees have in the past been 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

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

An employer's health and safety obligations are numerous and are 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 health and safety at work.
- Adopt general rules which regulate the rights, obligations and responsibilities in the area of health and safety at work (only applicable to employers with more than ten employees).
- Adopt risk assessment rules for all work posts.
- Maintain and store various health and safety records.

An employer that fails to meet or maintain the relevant health and safety obligations can be subject to certain pecuniary penalty provisions in its capacity as a legal person, and can be fined from RSD1,500,000 (approximately EUR12,750) to RSD2,000,000 (approximately EUR17,500).

Taxation of Employment Income

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

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

Foreign Nationals

The taxation of foreign nationals working in Serbia under an employment agreement is generally the same as for Serbian employees. A person's liability to pay Serbian income tax is determined by both that person's tax residence status and the source of the income derived by that person. A Serbian tax resident is an individual who stays (or has the intention to stay) in Serbia for more than 183 days in a 12-month period, or whose domicile or centre of business and vital interest is within the territory of the Republic of Serbia, and such a tax resident is liable to pay income tax on their worldwide income in Serbia in the same way as a Serbian national. A non-resident of Serbia (for income tax purposes) is an individual who does not fulfil any of the abovementioned conditions for tax residency. A non-resident will only pay income tax on income derived from Serbian sources.

Double taxation treaties may also be relevant to the issue of the amount of income tax payable for a foreign national working in Serbia, since certain countries may have a double taxation treaty in place with Serbia which results in nationals of that country only being subject to taxation on their country of origin.

Nationals Working Abroad

Employees assigned to temporary work abroad must still pay income tax in Serbia at the same rate as Serbian residents. The basis for taxation is the salary that the assigned employee would have received if they had worked in Serbia in the same or a similar work post. However, different rules may also apply under an applicable double taxation treaty.

23. 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

Income tax is charged at a flat rate of 10% against an employee's gross employment income. However, an employee's basis for income tax on employment income is reduced by a monthly, non-taxable personal allowance of RSD21,712 where the employee works full-time hours (applicable from 1 January 2023 to 31 December 2023: a non-taxable personal allowance of RSD25,000 currently applies from 1 January 2024).

Social Security Contributions

Social security contributions are mandatory and are based on the employee's registered income. The current rates are as follows (applicable from 1 January 2023):

- Mandatory pension and disability insurance: 14% (paid by the employee) and 10% (paid by the employer).
- Mandatory health insurance: 5.15% (both the employer and the employee each pay 5.15%).
- Unemployment insurance: 0.75% (paid by the employee only).

Intellectual Property (IP)

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

Under the Law on Copyright and Related Rights (*Zakon o autorskom i srodnim pravima, Official Gazette of the Republic of Serbia, Nos. 104/2009, 99/2011, 119/2012, 29/2016 and 66/2019*), if an employee has created a work during the course of the employment relationship in the performance of their work duties, the employer will be authorised to exploit that work and will exclusively hold the economic rights concerning its exploitation within the scope of the employer's registered business for a period of five years from the date that the work was completed, unless otherwise provided by any general regulation or the employment agreement. However, the employee who created the work is generally entitled to a special remuneration from the employer where the employer exploits the work. If the IP rights relate to a computer program, the permanent holder of all exclusive economic rights in the computer program is the employer, unless the employment agreement provides otherwise.

Restraint of Trade

25. 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

Restriction of activities during employment. The employment agreement can specify the jobs that an employee cannot perform (either on their own behalf, or on behalf of and for the account of another legal entity or natural person) without the employer's express consent during the course of employment.

However, a non-compete obligation can only be agreed where an employee can, through their 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 any prohibition on competition, depending on the type of activity which is subject to that prohibition, may also be determined by the work rules or the individual employment agreement. There is no specific legal requirement regarding the geographical territory that can be covered.

Restriction of activities after termination of employment. See below, *Post-Employment Restrictive Covenants*.

Post-Employment Restrictive Covenants

A non-compete obligation can last for a maximum period of two years after termination of the employment relationship. Where such an obligation is imposed, the employer must also pay the former employee monetary compensation in the amount agreed in the employment agreement.

Relocation of Employees

26. 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 they are 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 the creation of an annex to the existing employment agreement.

Contributor Profiles

Vuk Drašković, Senior Partner

Bojović Drašković Popović & 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

Language. English

Professional Associations/Memberships

- Serbian Bar Association.
- Foreign Investors Council (participates in various activities, 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).
- A leader of the regional legal network South East Legal Alliance (SELA) (actively participated in forming this network in 2016).

Publications

- *Thomson Reuters, Employment and Employee Benefits in Serbia: Overview (2019/2020, 2020/2021, 2021/2022, 2023/2024).*
- *Chambers Global Practice Guide Contributor: Employment 2023.*
- *Paul Hasting's Guide: Mapping the Trends: The Global Employer Update 2023.*

Miloš Andrejević, Partner

Bojović Drašković Popović & Partners
T +381 11 7850 336
F +381 11 7850 337
E *milos.andrejevic@bd2p.com*
W *www.bd2p.com*

Professional Qualifications. Serbia, Attorney at law

Areas of Practice. Employment law; immigration; data protection; dispute resolution.

Non-Professional Qualifications. LLM, Master of Law in Public International Law, Faculty of Law, University of Belgrade; LLB, Faculty of Law, University of Belgrade

Language. English

Professional Associations/Memberships

- Serbian Bar Association.

- Vice president of the HR Committee within the Foreign Investors Council (mandate June 2020 to June 2022).
- Foreign Investors Council (HR Committee) (participates in various activities, 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).
- Member of the Labour Regulations Committee of the AmCham Serbia.
- Member of SELA.

Publications

- *Thomson Reuters, Employment and Employee Benefits in Serbia: Overview (2019/2020, 2020/2021, 2021/2022, 2023/2024).*
- *Chambers Global Practice Guide Contributor: Employment 2023.*
- *Paul Hasting's Guide: Mapping the Trends: The Global Employer Update 2023.*
- *OneTrust DataGuidance, Serbia: Amended law becomes "better aligned with NIS Directive" (November 2019).*
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