REFORMS FOR ECONOMIC GROWTH AND BUSINESS RESILIENCE 2022

LABOR REGULATIONS COMMITTEE

AMCHAM SERBIA
A LEADER IN CHANGE

LABOUR REGULATIONS COMMITTEE

OBJECTIVE 1: ALLOW FIRMS TO HIRE INTERNS OUTSIDE FORMAL EMPLOYMENT

...BY AMENDING REGULATION TO INCENTIVISE INTERNSHIPS

CHALLENGE: Current regulations still offer no contractual arrangements that would allow companies to hire interns outside formal employment. The lack of an appropriate statutory framework governing internships hinders businesses' ability to offer training and continuing professional development to young and inexperienced people and the unemployed. Firms have reported lack of staff experience and specific skills as key obstacles to greater hiring, underscoring the importance of changing the current system that reduces opportunities for learning. Article 201 of the Labour Law makes it virtually impossible to hire persons who require professional development, except for purposes of 'serving as interns or sitting professional examinations when this is required by law or statutory instrument as a prerequisite for practising a profession'. Even though in late 2021 the Ministry of Labour, Employment, Veterans' and Social Issues completed a public consultation procedure on the Work Placement Law, this piece of legislation is yet to be finalised.

RECOMMENDATIONS:

- Continue consultations with all relevant stakeholders and organisations to finalise the Work Placement Law.
- Consider amending provisions of the draft law that may limit the ability of interns and employers to arrange internships to suit their legitimate objectives and needs (such as requirements for individuals to undertake internships, maximum internship duration, and internship remuneration).
- The new law ought to provide a flexible framework for internships that will be appropriate and feasible for all industries, allow young people freedom to choose their occupations, and foster the development of young people's practical experience, concrete knowledge, and appropriate skills in their chosen occupations.
- Any prohibitions in the law should be restricted to preventing abuses where employment is misrepresented as internship.
- Permit access to proposed new internship contracts or existing professional development contracts to businesses whose internal staffing rules do not require mandatory internships or professional examinations.
- Require businesses to ensure that the substance of internships is regulated in advance and conforms to quality standards (mandatory training curricula, standards, and objectives; arrangements to verify learning outcomes; mandatory mentoring; internship length; and certificate of completion).

OBJECTIVE 2: BROADEN OPTIONS FOR ONLINE DELIVERY OF DOCUMENTS AND ELECTRONIC SIGNATURE OF COLLECTIVE AND INDIVIDUAL DOCUMENTS GOVERNING EMPLOYMENT RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES

…BY AMENDING REGULATIONS TO EXPLICITLY ALLOW ONLINE DELIVERY

CHALLENGE: The Labour Law allows online provision only for two types of documents, namely payslips and annual leave decisions. The Ministry of Labour has issued a number of divergent opinions on this issue. One view holds that an 'electronic' annual leave decision in effect means a printed, signed,

stamped, and scanned copy of this document that is delivered to an employee online. This arrangement also requires the employer to retain proof of having sent the document, which in practice means evidence that the employee has received the e-mail with the document and opened it.[1] This interpretation is rather restrictive and does not support one key objective of digitalisation – greater flexibility in how companies communicate with their employees – but rather imposes additional complex administrative requirements on businesses. The Ministry's other opinion explicitly states that payslips need not be printed, signed, stamped, and scanned for online delivery, making it sufficient to send electronic copies of these documents to employees with no stamp or signature.[2] These contradictory positions clearly show that online delivery remains fraught with inconsistency and is unclear even to the regulators. There also seems to be no valid reason why online delivery is restricted only to payslips and annual leave decisions.

RECOMMENDATIONS:

- Clearly define online delivery of documents by amending legislation and ensuring the Ministry of Labour assumes a consistent view that this type of delivery does not require scanned paper copies.
- Permit online delivery of other documents/decisions on employee rights and obligations, such as unpaid leave, maternity leave, and the like. Experience gained during the Covid-19 pandemic clearly underscores the huge importance and manifold advantages of allowing businesses to communicate with their staff online without undue formalities and procedural restrictions.
- Align the Labour Law with the Law on Electronic Documents, Electronic Identification, and Trust Services in Electronic Transactions to allow electronic signing of collective and individual documents governing employment rights, obligations, and responsibilities.

OBJECTIVE 3: REGULATE WORKING FROM HOME AND CLARIFY HEALTH AND SAFETY RESPONSIBILITIES

…BY AMENDING THE LABOUR LAW AND THE OCCUPATIONAL HEALTH AND SAFETY LAW

CHALLENGE: As it currently stands, the legal framework does not distinguish between 'remote working' and 'working from home', whilst EU law clearly differentiates between these two types of out-of-office work, chiefly with reference to the amount of time spent working away from an employer's premises, and prescribes different rules for each of the two. In addition to requiring an online connection, remote working is usually defined as permanent or regular employment away from an employer's premises, whilst working from home is described as occasional work that entails more flexibility. Another challenge is posed by the lack of clarity in terms of employers' health and safety requirements where employees work from home, as the Serbian Occupational Health and Safety Law defines the workplace as 'space intended for the performance of work for an employer (inside a building, in the open, or at temporary or moveable construction sites or facilities, in machinery or vehicles, etc.) in which an employee remains or to which an employee has access whilst at work and which is directly or indirectly controlled by the employer'. Yet if an employee is working from home, it is highly questionable whether their employer controls their workspace even 'indirectly', and so it remains unclear whether the employer has any health and safety responsibilities in this case.

[1] Opinion No. 011-00-606/2015-02 of the Ministry of Labour, Employment, Veterans' and Social Issues, Labour Department, 18 June 2015.
[2] Opinion No. 011-00-61/2015-02 of the Ministry of Labour, Employment, Veterans' and Social Issues, Labour Department, 3 April 2015.

RECOMMENDATIONS:

- Amend the Labour Law to clearly differentiate between regular remote working and occasional working from home. Regular remote working contracts should clearly set out all rights and responsibilities of both employee and employer, whilst agreements on occasional work from home ought to provide flexibility (such as allowing employees and employers to independently make decisions in some cases) and would not need to be as exhaustively detailed as remote working contracts.
- Exhaustively regulate the costs and amounts employers are required to pay or reimburse to staff working remotely.
- Regulate supervision and oversight of staff working remotely.
- Prescribe which equipment employers are required to provide to their staff.
- Amend the Occupational Health and Safety Law to clearly spell out the health and safety responsibilities of both employers and employees if the employee is working at home where the employer exercises no control over the workspace involved. This should clearly regulate how the working environment and microclimate are measured at the home of an employee, including electromagnetic fields, electricity supply, and the like, and when such measurements are taken – whether only when an employee uses employer-provided equipment, when such equipment is used only partially, or when it is not used at all. In addition, clearly stipulate how employers assess any risks inherent in remote working and ensure such assessment is part of the employer's risk assessment document. We also recommend considering greater flexibility in cases of only occasional work from home. The rules should also clearly define what is considered a workplace injury in the event an employee works remotely.

OBJECTIVE 4: REDUCE ADMINISTRATIVE BURDEN ON EMPLOYERS FOR KEEPING EMPLOYMENT AND HEALTH AND SAFETY RECORDS

…BY AMENDING THE EMPLOYMENT RECORDS LAW AND RELEVANT BYELAWS

CHALLENGE: Dating from 1996, the Employment Records Law is obsolete and requires changes that would promote legal certainty and reduce administration. This piece of legislation ought to be brought up to date to reflect technological developments to record-keeping and retention, and also needs major review to bring its wording into line with other regulations.

RECOMMENDATIONS:

- Technological advances mean the Employment Records Law should specifically regulate electronic record-keeping, as this would greatly reduce the time needed to input data and the cost of storing such records. Storage ought to be standardised, as should options for access to data by inspection bodies and other authorised persons. Even though the Law does not forbid electronic record-keeping, employees always maintain a parallel set of physical documents as it is unclear which electronic documents will prove acceptable to the Labour Inspectorate. The Accounting Law has long made it possible to store source accounting documents and other relevant information on electronic media, with similar arrangements also regulated by secondary health and safety legislation. To ensure these rules can be applied effectively, build appropriate capacity of labour inspectors for auditing compliance with legal requirements in this regard.
- Article 4(2) of the Employment Records Law requires compulsory records to be kept 'perpetually', with Articles 7, 25 and 43 mandating that employers also retain the records

perpetually. That said, the Law is not specific about what is meant by 'perpetual' retention, and no further clarification has been forthcoming from the authorities. The wording seems to require records to be retained forever, which clearly is an ineffectual and unreasonable option, new provisions are required that would set out justified and realistic retention schedules.

- Some records required of employers are outdated, cause excessive administration, or violate employee privacy, and we therefore recommend these requirements be eliminated.

…BY AMEDING SECONDARY HEALTH AND SAFETY RECORD-KEEPING LEGISLATION

CHALLENGE: The administrative burden for health and safety is onerous. Article 17(1)1) of the Regulation on Health and Safety Record-Keeping requires health and safety records for some categories of staff to be retained for 40 years. Even though the Regulation permits either electronic or physical records, it explicitly states that information on staff that undergo health and safety training must be retained on paper. An additional condition is that electronic documents must be furnished with a qualified electronic signature.

RECOMMENDATIONS: Reduce retention times for health and safety records from 40 years to a more appropriate period, whilst relaxing requirements for documentation in electronic formats.

OBJECTIVE 5: RELAX REQUIREMENTS FOR SECONDING STAFF ABROAD

…BY AMENDING THE LAW ON SECONDMENT ABROAD AND RELATED SAFEGUARDS

CHALLENGE: Article 4(3) of the Law limits the time a staff member may spend abroad on official company business to a (non-contiguous) total of 90 days in each calendar year. This restriction on official travel means secondment rules apply even where this is not necessary, such as when an employee's time spent abroad clearly constitutes official travel (e.g. if a company director travels to negotiate contracts).

RECOMMENDATION: Remove annual restrictions on official travel abroad, and clearly stipulate what is considered official travel, to avoid recourse to secondment rules. According to Croatian law, if a staff member is seconded abroad for a contiguous period of less than 30 days, the underlying employment contract need not be amended to account for the time spent abroad. This means that any work-related foreign travel for under 30 days can be treated as official travel, and that special secondment rules apply only when an employee spends a contiguous period of more than 30 days abroad.