REFORMS FOR ECONOMIC GROWTH AND BUSINESS RESILIENCE 2024

LABOR REGULATIONS COMMITTEE

AMCHAM SERBIA
A LEADER IN CHANGE

Labor Regulations Committee

OBJECTIVE 1: BROADEN THE 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 defeats the purpose of digitalisation –greater flexibility in how companies communicate with their employees – whilst imposing 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.

Since a regulatory framework for paperless operations was introduced as early as 2017 with the Law on Electronic Documents, Electronic Identification, and Trust Services in Electronic Transactions ('Electronic Documents Law'), nothing prevents the Ministry of Labour from assuming a clear stance on the use of electronic documents in employment-related matters. Article 7 of the Electronic Documents Law stipulates that the written form of an electronic document must not be denied legal effect and probative force in legal proceedings solely on the grounds that it is in an electronic form, and that an electronic signature shall not be denied legal effect and probative force in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for a qualified electronic signature. A qualified electronic signature has the equivalent legal effect of a handwritten signature (Art. 50(2)). Article 10(1),(2) also states that a document originally created in an electronic format is deemed to be the original of that document, and the same also applies to an electronic document that has the same digital signature as the original. In view of these provisions, AmCham believes the Electronic Documents Law is already applicable to both signing of documents in employment matters and the delivery of those documents.

RECOMMENDATIONS:

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[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.

- 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. Clarify what documents may be delivered online using qualified online delivery or a service that includes proof of receipt signed using a qualified electronic signature, and what documents can be sent by regular e-mail.
- Align the Labour Law with the Law on Electronic Documents, Electronic Identification, and Trust Services in Electronic Transactions by adopting a formal opinion on how employment-related documents can be managed electronically, including to allow electronic signing of collective and individual documents governing employment rights, obligations, and responsibilities.

OBJECTIVE 2: REDUCE ADMINISTRATIVE BURDEN ON EMPLOYERS FOR KEEPING EMPLOYMENT AND HEALTH AND SAFETY RECORDS

…BY AMENDING THE EMPLOYMENT RECORDS LAW AND RELEVANT BYLAWS

CHALLENGE: Dating from 1996, the Employment Records Law is obsolete and requires changes that would promote legal certainty and reduce red tape. 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, and 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 AMENDING 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.

RECOMMENDATION: 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 3: RELAX REQUIREMENTS FOR SECONDING STAFF ABROAD TO PROMOTE REGIONAL EXPANSION

... 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). For companies that have a regional presence, in particular given the opportunities presented by Open Balkans, such a restrictive interpretation only imposes onerous administrative requirements and increases costs.

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.

OBJECTIVE 4: ALLOW FIRMS TO HIRE INTERNS OUTSIDE OF 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. However, AmCham believes students the restrictions should not apply to students or other individuals in training for qualifications required for the position they are interning in. This arrangement is intended to allow students to gain practical knowledge of rapidly evolving technologies during the course of their formal education so as to enhance their employability after graduation.

OBJECTIVE 5: REVISE AND STREAMLINE EMPLOYMENT REGULATIONS

…BY AMENDING THE LABOUR LAW WHERE NECESSARY

CHALLENGE: Some aspects of the Labour Law ought to be revised to address issues identified in practice, including employment termination arrangements, trial employment, and salary calculation methods.

RECOMMENDATIONS: These rules should be aligned with emerging developments and needs of the labour market to ensure predictability and safeguard both employees' and employers' rights. The changes should include clarifying provisions that govern termination, improving rules on trial employment, and aligning salary calculation methods with modern standards and practices.

For instance, the remuneration an employee is entitled to when on leave is based on their average salary for the preceding 12 months, which can include bonuses and other emoluments. This approach can mean an employee will earn much more when on leave than when actually working. The rule ought to be changed to link leave remuneration to base pay plus a length of service bonus. Consideration should also be given to aligning labour regulations with the Health Insurance Law, which defines average salary for the preceding 12 months as comprising base pay, performance-based pay, and any increased pay rate. Similar changes should be made to Article 76 of the Labour Law, which governs compensation for unused vacation days, which should also be linked to an employee's average (total) salary over the preceding 12 months.

CHALLENGE: The world is not the same place it was when the Labour Law was last amended in 2014, with technology, migrations, and the Covid-19 pandemic all affecting labour markets. The current Serbian statutory framework is outdated and unable to respond effectively to the myriad emerging issues.

RECOMMENDATIONS: Serbian labour legislation ought to be revised to meet the needs of today's labour market. This should include legislating more flexible forms of work, regulating remote working, permitting companies to communicate officially with their staff by electronic means in a broader range of situations, and allowing records to be retained electronically. All these arrangements should promote greater efficiency in managing workers and help all stakeholders to adapt to new developments.