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Serbia: Law on Agency Employment – adoption of long-awaited legal framework regarding staff leasing

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Employment

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Although staff leasing has been tolerated in practice despite lack of the legal framework, this unregulated area was source of a significant legal uncertainty. Finally, on 6 December 2019, the National Assembly of the Republic of Serbia adopted the long-awaited Law on Agency Employment (*“Official Gazette of the RS”, no. 86/2019*) (the “Law”).

Concept of Agency Employment

Agency employment involves a three-way legal relationship between an employee, a temporary employment agency (the “Agency”) and a beneficiary employer. The employee establishes employment relationship with the Agency, but does not perform work there. The Agency assigns the employee to the beneficiary employer, based on a special agreement concluded by the Agency and the beneficiary employer. The relationship between the assigned employee and the beneficiary employer is therefore indirect and depends on the employment agreement concluded between the Agency and the employee, as well as the agreement on assigning the employee concluded between the Agency and the beneficiary employer.

Establishment of the Agency

Agency employment can be provided only by the Agencies. The Agency can be established in different legal forms of companies, as well as in entrepreneurial form. Once established, the Agency must obtain the permit for assigning the employees issued by the Ministry of Labor, Employment, Veteran and Social Matters. The permit is issued for the period of five years and can be renewed an unlimited number of times.

Contractual Relations Regarding Assignment of Employees

The contractual relations arising from the employee assignment are determined by two agreements: employment agreement concluded between the Agency and the employee, and agreement on employee assignment concluded between the Agency and the beneficiary employer. An employee may conclude an employment agreement with the Agency for indefinite or a definite term. In addition to the elements stipulated by the law governing labor, the Law also prescribes additional elements which must be included in these employment agreements.

The Agency may assign an employee who concluded employment agreement for a definite period of time to work with the beneficiary employer for the period of up to 24 months, in accordance with the respective provisions of the Labor Law governing definite term employment. The Agency may not assign a definite term employee who has previously been in a definite term employment relationship with the same beneficiary employer directly or through the same or another Agency for a total duration of more than 24 months.

Limitation of number of assigned employees

One of the most important novelties is the limitation of number of assigned employees. Namely, the total number of assigned employees employed for a definite term with the beneficiary employer cannot exceed 10% of the total number of the beneficiary employer’s employees. On the other hand, this limitation does not apply if the employees are employed by the Agency for indefinite period of time.

Working Conditions of Assigned Employees

The equality of assigned employees with other employees within the same employer is the central point of defining the working conditions of the assigned employees. The Law stipulates that assigned employee will be entitled to the same working conditions as the comparable employee of the beneficiary employer, including the salary. The concept of comparable employee is a novelty which may cause numerous issues in practice, especially in the cases when there is no such employee within the beneficiary employer. In such cases, the Law stipulates comparing with another suitable employee of the beneficiary employer, which further complicates this concept and potentially creates numerous issues.

Termination of employment agreement for the reasons arising at the beneficiary employer is regulated by the Law. Since the Agency is the employer, it is the only one who can terminate the employment agreement of the assigned employee. What makes the whole process specific is the fact that the termination reason can occur with both the beneficiary employer and the Agency. Although the work of the assigned employee is carried out at the beneficiary employer, a dismissal reason may also arise based on some facts relevant to the termination of the employment agreement that arose in connection with the employee’s relationship with the Agency.

Other obligations of the beneficiary employer

The beneficiary employer has certain specific obligations towards assigned employees. In that respect, the beneficiary employer is inter alia obliged to provide occupational safety and health measures for the assigned employees, in accordance with regulations in the area of occupational safety and health. Further to that, the beneficiary employer is obliged to maintain a record of the assigned employees, the content of which is prescribed by the Law.

Penalties

As for the penalties, a fine ranging from 800,000.00 to 1,500,000.00 RSD will be imposed on an Agency or beneficiary employer if they act contrary to the provisions of this Law.

Transitional and Final Provisions

The relevant by-laws will be adopted by 31 December 2019.

The Law enters into force on 14 December 2019, and will apply from 1 March 2020, except for the provisions governing the conditions of work of the agencies, which will apply as of 1 January 2020.