

CORONA OUTBREAK – STATUS REPORT

State of emergency in Serbia was declared on 15 March 2020 followed by manifold preventive and restrictive measures adopted on daily level aimed at limiting the spread of COVID-19 virus. Latest and most restrictive measures so far were imposed on March 22 and relate to extension of nationwide mandatory curfew from 5 p.m. to 5 a.m. leading to near total lockdown. Some of earlier measures involve suspension of intercity bus transport, international air traffic, closing of all border crossings as well as closing of schools, kindergartens, shopping malls, restaurants and cafés, total ban of movement for senior citizens etc.

Given that said measures are enacted on daily level, the purpose of this update is to provide an overview of certain important legal measures enacted by the Government. Moreover, below you will find key takeaways for employers as well as considerations pertinent to application of force majeure.

1. GOVERNMENT MEASURES

- **Work from home**

On March 16, the Government adopted the Decree on Organization of Work during the State of Emergency obliging employers to organize work from home or work from distance. Employees may be directed to work remotely based on employer's decision containing the working hours and the method of supervision while employers are required to keep records of employees who are referred to work from home. Due to the exceptional circumstances, no annexes with employees are required in order to exercise this measure.

For businesses which cannot be performed from a distance, employers are required to adjust the work process by organizing work in shifts, holding meetings electronically and postponing all business trips.

- **Night shifts**

Following the initial night curfew imposed on March 18, from 8 p.m to 5 a.m. employees working in night shifts are exempted from the ban subject to movement permits supposedly issued by the Ministry of Internal Affairs. However, instead of permits, employers operating in shifts were instructed on March 19, by the Ministry of Economy, to complete predefined spreadsheets with details of all night shift employees and send to specially designated email account of the Ministry - vanrednostanje@privreda.gov.rs. Employers need to provide each employee with work order on daily level. In the light of recent extension of curfew hours, employers ought to provide the Ministry with updated lists for all workers.

- **Court proceedings**

The Government adopted the Regulation on Deadlines in Court Proceedings During the State of Emergency which entails suspension of deadlines for filing of claims and submission of legal remedies during the state of emergency in litigation proceedings, criminal proceedings initiated with a private lawsuit, non-contentious proceedings, enforcement and court-administrative proceedings, as well as proceedings initiated with constitutional appeal. Similarly, the deadlines for filing appeals and extraordinary legal remedies to decisions ending criminal, misdemeanor, commercial offense proceedings are also suspended during the state of emergency.

- **Notaries and private enforcement officers**

Notarial certifications are suspended save for urgent cases when sessions are scheduled with minimum 1-hour difference between certifications. Following recommendation of the Ministry of Justice, enforcement proceedings by private enforcement officers are generally suspended.

- **Liquidity measures**

In an attempt to mitigate negative impact on economic stability of coronavirus crisis, the first set of measures introduced by the National Bank of Serbia and Ministry of Finance involves: reduction of reference rate to 1,75%, introduction of a minimum 90 day moratorium on all debts and finance leases

and specific relief for certain category of taxpayers. Accordingly, loan users regardless whether natural persons or legal entities, may opt for the recess in repayment of credit liabilities. Ministry of Finance decided not to annul agreements with taxpayers previously granted deferred payment of tax debt nor to initiate court enforcement procedures for payment of tax debts.

- **Support for private sector**

Save for said liquidity measures, the Government has not enacted so far, any additional measures reducing negative impact in private sector. However, on a press conference held on March 23, the President of the Republic of Serbia announced for the first time orally that a plan of measures worth 2.5 to 4.5 billion dinars is being prepared by the State, to support the private sector, in particular the most affected businesses, and the employers which have not laid-off the employees. There is still no information whether there will be any postponement of VAT payments and monthly corporate income tax, which is an important measure that the private sector is expecting to be implemented.

2. HEALTH AND SAFETY AT WORK

- **Measures at the workplace and towards infected employees**

Employers are generally obliged to ensure adequate work conditions in terms of health and safety at the workplace. In light of the present circumstances, employer should especially make sure that additional measures and precautions are implemented in order to reduce the chances of contamination amongst employees at the work place (e.g. procurement of sufficient quantities of sanitation gents, observance of hygiene measures, limiting the number of people in the premises, use of protective masks etc.). In that regard, employers should regularly monitor and observe instructions and recommendations by the competent authorities and also consult with specialized agencies which are engaged for health and safety services.

The Serbian Law on Protection of the Population from Infective Diseases and other applicable regulations do not explicitly regulate the procedure which should be followed by employers in case of virus pandemic. But if there is a suspicion that an employee has COVID-19 symptoms, the employer is obliged to remove the employee from work, notify competent health institutions and follow protocols issued by the competent authorities. Also, the employer may contact the Ministry of Internal Affairs in line with the Decree on Measures During the State of Emergency, which is entitled to limit or prohibit movement of individuals and impose isolation to individuals who are suspected to be infected.

- **Quarantine or sick leave**

In accordance with the Law on Protection of the Population from Infective Diseases, sanitary inspector may order a measure of health observance or quarantine in respect of persons who are potential carriers of infective diseases or were in contact with such persons. In such a case, employees are objectively prevented from coming to work and are entitled to 65% of the average salary in the previous 12 months. If the duration of the quarantine measure exceeds 30 days, the compensation from that point onwards is compensated by the State.

Same regime and amount of compensation as for persons in quarantine applies in case of sick leave or leave due to sickness of family member, which needs to be approved by a doctor within the primary health center.

- **Health observance**

This measure implies that the person in question needs to report to the competent medical authority for necessary health checks. If not resulted in quarantine, the measure is formally not sufficient ground for leave from work. However, in practice employers grant paid leave to the employees in this situation (with 100% of the salary) at least for as long as the measure is valid, in order to protect other employees.

In addition, in practice people returning from abroad, and who are not referred to quarantine or health observance, are provided with health pamphlets, which contain recommendations for reduction of risks of contagion. Although such recommendations are not formally grounds for paid leave, in practice many employers refer employees to paid leave with 100% of salary, based on proof that they came back from abroad (e.g. passport photo, boarding pass).

- **Home-isolation and childcare:**

In accordance with the Decree on Measures During the State of Emergency, the Ministry of Internal Affairs in consultation with the Ministry of Health may order persons not to leave their residence for a specific period of time, due to risk of contagion. Employment status of these persons has not been resolved by accompanying legal acts although they are clearly prevented from coming to work. In the event that work from home cannot be organized for this category of employees, they should be directed to paid leave, in anticipation of further measures which will regulate their status.

Finally, the Government announced in the media that one parent of a child of up to 12 years of age will be granted a leave from work in order to be able to take care of the child. However, up to date no formal decision has been adopted to that effect.

3. MEASURES AVAILABLE FOR EMPLOYERS IN CASE OF TEMPORARY BUSINESS DECLINE

- **Paid leave**

Employers may unilaterally decide to refer all or some of the employees to a paid leave of up to 45 working days, which may be further extended subject to the approval by the Ministry of Labor and obtained opinion by the labor union in the particular branch. Employees referred to paid leave are entitled to reduced salary compensation, equal to 60% of the average salary in the previous 12 months (but the compensation may not be lower than the minimum salary). Similar measure is available to businesses that are mandated to suspend their work operations due to administrative orders or inability to maintain health and safety at work.

- **Redistribution of work hours**

Labor Law allows redistribution of working hours in some situations, to the effect that employers may require some or all employees to work shorter hours in the upcoming period (e.g. 30 hours a week) when business is declining, which will be compensated by longer working hours in the later period (e.g. 50 hours a week) when situation stabilizes. Redistribution does not affect the salary and it remains the same irrespective of the fluctuation in distribution of working hours.

- **Part-time employment**

Switching to part-time employment (i.e. engagement for less than 40 hours per week), in order to reduce the costs and optimize employees' efficiency may be done based on annexes to the employment contracts which include exact weekly work hours. Transition to part-time employment (permanent or temporary) may not be imposed on the employees, and that it is predicated on their consent.

- **Annual leave**

Some employers are referring employees to annual leave while the business is in decline, so that they would be available once normal operations resume. Note that decisions on annual leave may be delivered electronically, but they must be delivered with 15 days prior notice. The exception is if employees themselves request the annual leave, when the prior notice is not required. The use of annual leave without the consent of employees and prior notice should be done with great caution as it may engender discontent within the organization, and even measures by the Labor Inspectorate.

- **Redundancy**

At this stage redundancy procedures based on the decline of business seem premature, as it is yet to be seen what the long-term effects of this health crisis will be (in particular on certain businesses). In other words, cessation or reduction of requirements for work needs to be permanent in order to justify termination of employment based on redundancy. The latest statements of the President of Serbia indicate the possibility of adoption of additional stimulating measures for employers who refrain from downsizing workforce and keep employment level.

- **Employees for a definite term**

Employment contracts of the employees engaged for a definite term may be terminated if their engagement is no longer required due to the reasons related to the pandemic and state of emergency (e.g. reduction of business operations). The same applies to contracts for temporary and occasional jobs and other forms of engagement outside of employment, although the covenants of the individual contracts should be observed in each individual case.

- **Application of disciplinary measures and sanctions**

At the present moment, employers should be extremely cautious when applying disciplinary sanctions (suspension, reduction of salary, termination of employment etc.), whenever there are indications that employee's failure may have been caused by the extraordinary circumstances connected with the pandemic and/or the state of emergency. In other words, employees may not be held accountable for breach of employment duties or discipline which could not have been reasonably avoided due to reasons beyond their control. Otherwise, there is a risk of subsequent legal action, but in some case also of negative publicity.

4. FORCE MAJEURE / CHANGE OF CIRCUMSTANCES

The pandemic of the COVID-19 and the ensuing administrative measures are likely to affect many businesses and contractual relationships, which raises the question of legal qualification of the crisis and whether it constitutes force majeure or change of circumstances (*rebus sic stantibus*) in the sense of the law.

On a general note, circumstances at hand could be qualified as force majeure in accordance with the Law on Torts and Obligations (Article 263), and as such could excuse the debtor from its contractual obligations. Nonetheless, each case should be examined individually, depending on the contractual covenants and on how exactly the parties' performance of contractual obligations was affected by the virus outbreak.

Similarly, the situation related to the virus outbreak can be qualified as change of circumstances, and as such trigger mechanisms for rescission or revisions of individual contracts, in line with Article 133 of the Law on Torts and Obligations. Of course, same as with force majeure, each case would have to be considered individual in order to determine whether the legal conditions are met.