HUMAN RESOURCES

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HUMAN RESOURCES

Since Bosnia and Herzegovina is still going through a period of transition and is still dealing with a number of systemic and institutional problems, therefore a process of standardization and harmonization of existing legal norms with the European legislation is slow and long, and has a particular impact on the field of labour law, as an area that is in the sense of the social aspect the most sensitive.

Due to the inability of reaching an agreement between the social partners and employers regarding legal regulation of labour law matters there are growing demands of the parties, both employers and workers, to use legal services in the field of labour law, and in accordance with that the Law Firm "SAJIC" in addition to the existing services also provides a wide range of services in the field of labour law, such as:

- Provision of legal opinions and advices in the field of labour relations,
- Preparation of general acts and individual decisions,
- Preparation and management of, and/or participation in disciplinary proceedings,
- Representation in labour disputes before all courts in the Republic of Srpska and BiH.

EMPLOYMENT CONTRACT

The right to work and freedom of work is a right guaranteed by the Constitution of the Republic of Srpska and the achievement of the same is regulated by the Law and collective agreements, general or individual. The employment relationship is a contractual relationship, which arises, lasts and terminates at the will of the contracting parties, i.e. workers and employers, but it is also the specific type of relationship because there are legal provisions which must be followed by both, the worker and the employer. It is based on the conclusion of the Employment Contract between worker and employer which in details regulates the rights and obligations of the parties.

An Employment Contract is a formal agreement which must be concluded in writing. Due to the specificity and importance of the contract of employment, the legislator stipulated mandatory information that must be contained in any contract of employment and that includes:

1. Name and headquarters of the employer,
2. Name, qualifications and permanent or temporary residence of the worker,
3. Start work date,
4. Position and place of work,
5. Salary, cash compensation and other benefits based on labour,
6. Length of annual leave,
7. Term of the contract, if the contract is concluded for a definite period,
8. Terms for termination of the contract concluded for an indefinite period,
9. Jobs with specific working conditions at the workplace, if any.

However, due to the fact that there is a possibility that the contract of employment can contain other data if it is deemed essential for the regulation of mutual relations, and for the regulation of relations arising in respect of the labour, provided that the contract of employment cannot contain provisions that are contrary to applicable legislation.

General requirements that workers must meet in order to conclude employment contracts include:

- Age of at least 15,
- General health capacity.

Persons between 15 and 18 years of age may conclude an employment contract but have to obtain a certificate issued by an authorized medical doctor and prove to have the general ability to work as well as the consent of a legal representative, provided that the minors cannot conclude contracts for the jobs that include specific working conditions.

Specific conditions that a worker must meet in order to conclude a contract of employment are different depending on the position but most often they refer to:

- Type and level of qualification,
- Working experience, if necessary for independent performance of activities,
- Special health capability for certain jobs,
- Knowledge of foreign languages,
- Specific computer skills.

A contract of employment can be concluded for an indefinite or definite (fixed-term) period. Workers who sign a contract of employment for a definite period of time are equal in rights with those who have concluded an employment contract for an indefinite time. The differences are limited to the duration of employment, given that the contract of employment for a definite period may be concluded for a period of two years, then, it is known in advance when the employment contract ends, but there must be some reason why the contract is concluded for a definite period, such as:

- for the execution of work that lasts up to 6 months,
- due to a temporary increase in workload,
- for replacement of the absent worker up to one year
- for performance of the job whose duration depends on the specific nature and type of work.

If the contract of employment for a definite period ends contrary to these conditions then it is considered to be a contract for an indefinite period. If after the expiry of the period for which the contract for a definite period was concluded, with the explicit or implicit consent of the employer, the worker continues to work, it shall be considered as an employment relationship for an indefinite period.

In addition to the contract of employment for a definite and indefinite time worker and employer may conclude the following working-legal agreements:

- *Probationary Contract for a period not longer than 6 months,* for which the employer is given the opportunity, before deciding to sign the contract of employment for a definite / indefinite period of time, to examine the knowledge and capabilities of the worker, as well as other facts directly related to the actual work. The employer is required, during the probationary period, to provide for every probationary worker an expert supervision and work monitoring in order to evaluate the same.

- *Contract on temporary and occasional jobs* shall be concluded for the performance of activities that might last for a certain time, but not longer than 60 days in a calendar year.

- *Contract on the conduct of activities outside the premises of the employer.*

- *Contract for services of domestic/personal staff*, which in addition to data prescribed by law as mandatory for all contracts, must contain data that are typical for such jobs. Stated contracts shall be registered with the relevant local authority.

Workers are entitled to limited working hours (full time job is 40 hours a week), to daily and weekly rest, as well as paid annual leave and absence in accordance with the law and collective agreement. Compliance with retracted working hours, leave and absence is very important for health protection of workers, relaxing from work and reproduction of workforce.

A worker may conclude a contract of employment for full-time with only one employer. However, there is a possibility of concluding agreements on additional work under certain conditions.

An employer may conclude with a worker contract for part-time work. For this work the worker shall receive salary and other employment rights in proportion to the working hours under the contract of employment.

Daily rest of workers during working hours is 30 minutes and in the Republic of Srpska it is included in working hours. Daily rest of workers between two consecutive working days is minimum 12 continuous hours. Weekly rest of workers is at least 24 continuous hours.

Annual leave of a worker lasts at least 18 working days, and that right will be increased by one day for each three years of service. For underage workers annual leave shall be 24 working days. A worker who does not have at least six months of continuous work, is entitled to the annual leave of at least one day for each full month of work. A worker may not waive the right to annual leave, and the employer may not deny the right to annual leave, nor he can, on behalf of unused annual leave, pay compensation to the worker. The employer shall allow the worker to use annual leave not later than the end of June next year.

The worker is entitled to paid leave in accordance with the law, collective agreements and employment contracts.

Safety at work, special protection of the minors, women and maternity, sick or disabled workers is regulated in detail by legal provisions which ensure protection of both physical and psychological integrity of workers, with the aim of safer performance of work and health protection of workers.

The right to pay is fundamental and inalienable right of workers under the employment contract which is effected by the work carried out in accordance with the law and collective agreements. In addition to the law there is a number of regulations and legislation that regulates salaries and other benefits, such as, among others, the rule book and employment contract. Provisions related to salaries must be an integral part of the contract of employment and salary should be shown as a gross salary. A worker is entitled to salary compensation in the amount of 100% for the time of annual leave, public holidays, maternity leave, and temporary inability to work due to injury at work or occupational disease, as well as in the course of work interruption occurred due to the failure of the employer to take appropriate protection measures. The right to salary compensation during temporary inability to work due to illness and injury the worker shall achieve in the amount of 70% for the duration of the said absence from work.

Employment shall be terminated upon expiry of the contract of employment concluded between the worker and the employer which regulates their relationship:

➢ *Employment will be terminated by force of law in the following cases:*

- when the worker completes 40 years of service or 65 years of age and at least 20 years of insurance,
- on the date when the final decision on the total disability of the worker is delivered to the employer,
- on the expiry date of the employment contract for a definite period,
- on the basis of the decision of a competent court resulting in the termination of employment of workers - with the day specified by the court decision,
- on the date of termination of the employer, or the date of application of provisional measures imposed on the employer by a competent court for a period longer than three months.

➢ *Employment will be terminated at the will of workers in the following cases:*

- on the basis of the mutual agreement between the worker and the employer,
- on the basis of the cancellation of the employment contract by the worker.

➢ *Employment will be terminated at the will of the employer in the following cases:*

- on the basis of the employment contract cancellation by the employer,
- on the basis of the expiration of the contract of employment for a definite period.

By concluding a contract of employment a worker undertakes to perform his/her official duties in a way not to impede or interfere with other workers in the performance of their work duties. The worker is obliged, in the course of employment, to conscientiously perform the job for which the contract was concluded, act in accordance with work orders issued by the employer, treat colleagues and other persons in correct and cultural manner, and do not make violations of obligations, serious or minor, which have been prescribed by the law, collective agreements and employment rules as such.

If a worker makes a serious breach of working obligations the employer may terminate the contract after a legally conducted procedure on determining the responsibilities of the worker (disciplinary proceedings).

In addition to the cancellation of the contract of employment due to serious violations of obligations, there are other cases prescribed by law in which an employer may terminate the employment contract, such as:

- if the work of the worker is not required any more due to economic, organisational or technological reasons;
- If the worker, due to his/her expertise and competences, has stopped performing the obligations specified under the employment contract;
- if the worker fails to return to work within 5 days since the termination of his leave without pay or a rest of rights deriving from working relationship.

The notice of the termination of employment contract shall be made in writing, comprising a statement of reasons for the decision. The employer shall send a copy of the termination notice to the worker.

The law regulates the cases when the employer is not allowed to terminate the employment contract due to economic, organizational and technical reasons, and this implies the following: pregnancy of the worker, maternity leave, parental leave and part-time work to care for child.

The employer may terminate the employment contract and at the same time offer a contract under the changed conditions. In this case, the existing employment contract with the worker must be terminated stating the grounds for termination of the same, as prescribed by law, and at the same time the worker is offered the conclusion of another contract under changed conditions. These changed conditions are mainly related to place of work, position, working conditions or salary. If the worker does not accept the offer to conclude a contract of employment under changed conditions, then the employment will be terminated and the worker is entitled to severance pay in accordance with the legal provisions.

If the employer performs a "mass dismissals" of workers, where the term "mass dismissal" understands dismissal made by the employer who employs more than 15 workers, and who in the period of the next three months intends to, due to reduced volume of work and other economic, technological and organizational reasons, dismiss at least 10% of the total number of workers, but not less than five workers, then the employer is obliged to consult the workers' council or the union if the council is not established. In order to implement the consultation the employer shall, in writing, not later than 30 days prior to termination of employment contracts, inform the workers' council or a union about the following reasons for the termination of the employment:

- number and qualification of workers whose employment shall be terminated;
- measures which might prevent termination of employment to all or a specified number of workers;
- measures which would allow the employment of workers with other employers.

If within a year after the termination of employment contract due to economic, organizational and technical reason, the employer intends to conclude contracts of employment with a number of workers with the same qualifications as the former workers, he must offer the job to the former workers first.

An employer shall pay a severance pay to the worker whose employment contract has been terminated by the employer and who has worked for at least two uninterrupted years, except when the employment contract is being terminated due to serious violations of working obligation. The amount of severance pay shall be determined by the collective agreement, rule book and employment contract, depending on years of service with the employer, and shall amount to at least one third of the average monthly salary of the worker paid during the last three months before the termination of employment contract for every year of service with the employer.

A worker may terminate the employment contract in the event of:

- violation of obligations under the employment contract by the employer,
- if the nature of violation is such that it reasonably cannot be expected from the worker to continue to work for the employer,
- when the worker wishes to terminate the employment relationship with the employer.

A worker shall submit the cancellation of employment to the employer in writing and shall state the reasons due to which he/she wants to cancel the contract of employment.

The notice period in case of termination of employment by the employer may not be less than 30 calendar days and shall begin on the day of submission of the notice to the worker. The worker is not entitled to a notice period in case of termination of employment due to serious violation of obligations. The notice period in case of termination of employment by the worker cannot be less than 15 calendar days. The employment contract or collective agreement could more closely regulate cases and conditions for notice period, duration of the notice period as well as other issues related to the rights and obligations of workers and employers during the notice period. During the notice

period the worker is entitled to all rights arising from the employment, as well as the right to use a day off in order to find employment.

To exercise his/her labour rights worker has the right to address the employer at any time, in writing or orally, if he/she considers that the employer has violated his/her right of employment. The period during which a worker can contact the employer is 30 days after becoming aware of the violation of the right and three months from the date of the violation. The rights of workers shall be managed by the business executives of the employer which in most cases is an operation body or director of the company or another person designated in the founding act of the company. A document based on which the worker addresses employer presents a request for protection of rights by which a worker requires the provision and realization of denied rights, which shall be submitted orally or in writing.

In order to protect his/her rights a worker can contact the competent labour inspectorate, which will perform control with the employer, and in case it finds some irregularities it may request from the employer to correct the same under the threat of adequate sanctions. The period in which a worker can contact the labour inspector for the protection of his/her rights is three months from the date of becoming aware of the violation, and not later than six months since the date of the violation.

In addition to the stated workers' rights, a worker who believes that the employer has violated his/her right arising from employment may file a complaint with the competent court for the protection of his/her rights. The right to claim is not subject to previous recourse to the employer for the protection of rights. The lawsuit to protect the rights of the worker may be filed within one year from the date of becoming aware of such violation, and not later than three years since the date of the violation.

There is also a possibility of an amicable resolution of the disputes between workers and employers before the Agency for peaceful settlement of labor disputes before which the proceedings are conducted in accordance with the Law on peaceful resolution of labour disputes.

LABOUR REGULATIONS

- ***Work Regulations (Rules of Procedure)***

Labour rights, the scope and methods of achieving the same shall be closer determined in the Work Regulations. Every employer who employs more than 15 workers is obliged to adopt the Work Regulations but before adoption the draft version must be submitted to the workers' council or trade union, whose opinion is obliged to consider before the adoption. If their opinion is not acceptable, then the employer has to inform the trade union and the workers' council, in writing, about reasons. When adopting the Work Regulations it is forbidden to establish less scope of rights from those determined by the law and at the same time it is allowed to identify and determine more favourable rights than those determined by the law. The Work Regulations regulate the specific issues governing the relationship between workers and employers, the manner and procedure of concluding a contract of employment between the worker and the employer, working time, breaks/rests, absences and salaries, benefits based on employment, protection of labour rights, disputes resolution between workers and employers, termination of employment contracts and other rights and obligations arising from employment.

Those employers who are not obliged to adopt the Work Regulations directly apply the provisions of labour law and the collective agreement that relates to the subject business.

- ***Regulations on systematization and organization of jobs***

Every employer who employs more than 15 workers adopts Regulations on systematization and organization of jobs. By this the employer defines in detail the internal organization of work, the division of labour and jobs, the conditions for performing business activities regarding specific positions, type and degree of education and other issues.

The aim of the adoption of the Regulations on the systematization and organization of jobs is to set the basis for achieving the general objectives of the company, such as:

- Organization and division of work and work processes,
- Work planning and staffing needs,
- Employment of workers,
- Determination of the base salary,
- Regulation of work safety,
- Determining the basis for successful management of human resources and making other general acts of the company.

- ***Regulations on disciplinary and material responsibility of workers***

Adoption of the Regulations on Disciplinary and Material responsibility of workers is very important for every company to preserve and protect labour discipline, and operational safety of all workers. Collective agreements regulate the general provisions related to disciplinary responsibility of workers, but the Regulations in detail regulate the responsibility of workers for violation of duty, or disrespect of work discipline, responsibility for the damage caused, the initiation and conduct of disciplinary proceedings, the imposition of measures for the violation of working obligations, terms of limitation of a case, the statute of limitation, deadlines for execution of disciplinary measures and other issues related to disciplinary and material responsibility of workers.

- **Regulations on the evaluation of work performance**

In order to control, encourage and improve the performance of workers, with aim to improve the work process within the company, employers are increasingly adopting this type of regulations that has proven to be very useful and practical. These Regulations govern the process of evaluating the performance of workers in a given period of time at the specific workplace. The same usually envisage regular and special assessment procedures, and beside the work performance they evaluate professional improvement in service, relationship with colleagues, external partners, customers etc.

The practicality of this process is reflected in the fact that the worker and the employer get a clear picture of the realized work performance, which can present a basis for financial motivation of workers in the case of exceptional performance, then the basis for pointing out mistakes during the work performance and necessary improvements or the basis for initiation of disciplinary proceedings due to the implementation of the established unsatisfactory performance. This procedure is usually carried out by the governing bodies of the company, which in the interests of the company, shall try to objectively assess the worker and performance achieved by the same.

LABOUR DISPUTE

A worker who believes that his/her employer has violated the right arising from the employment may file a civil action for the protection of his/her rights before the competent court. This right is not conditioned with previous addressing to the employer for the protection of rights.

Labour disputes shall be initiated and conducted in accordance with the provisions of the Labour Law, which defines the procedure for resolving disputes between workers and employers.

In labour disputes, the lawsuits are mainly submitted by workers whose right related to the employment has been violated. The deadline for filing an action for the protection of rights is one year from the date of learning about such violation, and no later than 3 years from the date of the violation. If the action is not filed within the statutory deadline (deadline for voluntary compliance) the worker loses the right to the protection of the rights before the court.

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