

GUIDE TO LABOUR LAW

LEGAL FRAMEWORK /SERBIA

TSG⁺

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TYPES OF EMPLOYMENT RELATION IN TERMS OF DURATION

An employment relation may be established for:

- **an indefinite duration**
- **a fixed term**

A fixed-term employment relation may not exceed a period of 24 months (maximum duration of a fixed-term employment relation).

A fixed-term employment contract may be concluded to establish an employment relation whose duration is predetermined by objective reasons arising from deadlines, completion of a certain task or occurrence of a certain event during the term of such employment.

Exceptions to the rule on the maximum duration of a fixed-term employment relation include:

1. replacing a temporarily absent employee until such time as he or she returns;
2. work on a project whose duration is predetermined, until the end of the project at the latest;
3. hiring a foreign national, based on a work permit in accordance with the law, until expiry of work permit at the latest;
4. employment with a newly established employer for up to 36 months, where not more than one year has passed between the entry of such employer into the register of the competent agency and the date of the employment contract;
5. hiring unemployed persons who lack no more than five years to meet one of the requirements for mandatory retirement, until such requirement is met, in accordance with retirement and disability insurance regulations.

Upon expiry of the employment contract under Items 1-3, the employer may conclude another fixed-term employment contract with the same employee, on the same or other legal grounds, in accordance with Article 37 of the Labour Law.

PROBATION WORK

Probation work should establish whether or not employee's abilities correspond to the job requirements.

The period of probation may not exceed six months.

Either employer or employee may terminate the contract of employment prior to expiry of probation, subject to a notice period of no less than five working days.

Employer must justify termination of employment contract with non-fulfilment of probation work requirements.

TYPES OF WORKING HOURS

- **Full-time working hours** (40 hours a week)
- **Part-time working hours** (shorter than full-time working hours)
- **Reduced working hours** (minimum 30 hours a week on jobs entailing increased risk)
- **Overtime work** (may not exceed 48 hours a week)
- **Night work** (any work between 22:00 hrs and 06:00 hrs the following day)
- **Work in shifts** (where employees work on same jobs in shifts according to a schedule)

TYPES OF RESTS AND LEAVES

RIGHT TO A BREAK AT WORK (RESTBREAK DURING A WORKING DAY)

Employees who work for at least six hours have the right to a break of no less than 30 minutes during their working day.

Employees who work between four and six hours have the right to a break of no less than 15 minutes during their working day.

Employees who work more than 10 hours a day have the right to a break of no less than 45 minutes during their working day.

DAILY REST

Employees have the right to no less than 12 hours of uninterrupted rest in the course of 24 hours.

In case of rescheduling of working hours, employees have the right to no less than 11 hours of uninterrupted rest in the course of 24 hours.

WEEKLY REST

Employees are entitled to an uninterrupted weekly rest of no less than 24 hours.

The weekly rest is taken on Sundays, as a rule, and the employer may determine another day for weekly rest, should the nature of job and the organisation of work so require.

ANNUAL LEAVE

The length of annual leave is determined by increasing the mandatory minimum of 20 days on the ground of work performance, conditions of work, work experience, professional qualifications of the employee, and other criteria determined in the by-law or the employment contract.

Employees may not waive their right to annual leave, nor may this right be denied to them or replaced with compensation in money, except in case of termination of employment.

In case of employment termination, the employee is entitled to a compensation for any unused annual leave accrued at the employer. The amount of compensation to be paid by the employer is determined based on the average salary in the preceding 12 months and proportionate to the number of days of unused annual leave.

OTHER LEAVES

- PAID LEAVE

Employees are entitled to a paid leave for a maximum of five working days in a calendar year, in cases of:

1. getting married;
2. wife giving birth;
3. serious illness of a member of immediate family;
4. and other cases as determined in the by-law and the employment contract.

The length of paid leave is determined in the by-law and the employment contract.

In addition, employees are also entitled to paid leave in case of:

1. death of a member of immediate family – five working days;
2. any voluntary blood donation – two consecutive days, including the day of blood donation.

- UNPAID LEAVE

The employer may grant unpaid leave to an employee. During the unpaid leave, employee's rights and duties derived from employment are discontinued.

SALARY, COMPENSATION OF SALARY AND OTHER EMOLUMENTS

SALARY

Employees have the right to a salary.

An employee's salary consists of:

- salary for the work performed and the time spent at work,
- salary based on the contribution the employee has made to the business success of the employer (rewards, bonuses etc.)
- other emoluments deriving from employment, in accordance with the by-law and the employment contract.

The salary for the work performed and the time spent at work consists of:

- **base salary** (determined in the employment contract, based on the requirements of the job for which the employee has concluded the employment contract, as specified by the rule book, and the time spent at work)
- **portion of salary for work performance** (determined based on the quality and volume of the work performed and the employee's attitude to his/her work duties)
- **increased salary** (for work on a public holiday which is a non-working day –no less than 110% base salary; for night work, provided such work has not been taken into account when calculating base salary - no less than 26% base salary, for overtime work - no less than 26% base salary, for the time at work per each full year of employment at the employer - no less than 0,4% base salary).

COMPENSATION OF SALARY

Employees are entitled to a compensation of salary:

1. equalling the average salary made over the past 12 months – during absence from work on public holidays which are non-working days, annual leave, paid leave, military drills, and reporting to government authorities upon their summons,
2. during absence from work due to temporary inability to work of up to 30 days, as follows: no less than 65% of the average salary made over the past 12 months before the month when temporary inability to work occurred, if the inability to work was caused by illness or injury sustained outside work, and 100% of the average salary made over the past 12 months before the month when temporary inability to work occurred, if the inability to work was caused by injury sustained at work or occupational disease, unless otherwise prescribed by the law,
3. no less than 60% of the average salary made over the past 12 months, during an interruption of work, or reduced volume of work caused through no fault on part of the employee, lasting up to 45 working days in a calendar year,
4. in the amount as determined in the by-law and the contract of employment during an interruption of work caused by an order of the competent government authority or relevant employer's body due to failure to implement the safety and health at work measures which are prerequisite for further carrying out of work without threat to lives and health of employees and other persons and in other cases as provided by the law.

The by-law and the contract of employment may provide for other cases where employees are entitled to compensation of salary.

COMPENSATION OF EXPENSES

Employees are entitled to a compensation of expenses in accordance with the by-law and the employment contract, as follows:

1. for commuting to and from work, in the amount of the price of public transportation ticket, unless the employer has provided transport;
2. for the time spent on a business trip in the country;
3. for the time spent on a business trip abroad;
4. for accommodation and meals during work and stay in the field, unless the employer has provided the employee with free accommodation and meals;
5. for meals during work, unless the employer has otherwise provided for the exercise of this right;
6. holiday cash grant.

The compensation received under Items 1-4 do not have the character of a salary.

OTHER EMOLUMENTS

Employees are entitled to other emoluments:

1. severance allowance on retirement, in the amount of no less than two average salaries;
2. reimbursement of funeral expenses in case of death of a member of immediate family, and in case of employee's death, to members of his/her immediate family;
3. damages for the injury sustained at work or occupational disease.

The emolument received under Item 1 does not have the character of a salary.

The average salary within the meaning of Item 1, is the average salary in the Republic of Serbia according to the latest data published by the national statistics agency.

TERMINATION OF EMPLOYMENT RELATION

GROUND FORS FOR TERMINATION OF EMPLOYMENT RELATION

Employment relation is terminated:

1. upon expiry of the term it was concluded for;
2. when the employee has reached the age of 65 and has at least 15 years of pensionable service, unless otherwise agreed between employer and employee;
3. by agreement between employer and employee;
4. by termination of the employment contract by either employer or employee;
5. at the request of parents or guardians of an employee under 18 years of age;
6. in the event of death of employee;
7. if it should be established in a manner prescribed by the law that the employee has suffered a loss of working ability – as of the date of service of the final ruling on the loss of working ability;

8. if, under the law, or the final ruling of a court of justice or another agency, the employee should be forbidden to perform particular jobs and other jobs are unavailable – as of the date of service of the final ruling;
9. if due to serving a prison sentence the employee must be absent from work for more than six months – as of the date of being sent to serve the prison sentence;
10. if a safety, correctional or protective measure, which was pronounced against the employee for a period exceeding six months, should require his/her absence from work – as of the date of commencement of such measure;
11. in the event of termination of employer's work, in compliance with the law.

TERMINATION OF EMPLOYMENT RELATION BY MUTUAL CONSENT

Employment may terminate based on a written agreement between employer and employee. Before signing the agreement, the employer must notify the employee in writing of any consequences that may arise in exercising the right to unemployment benefits.

TERMINATION BY EMPLOYEE

Employees have the right to terminate the contract of employment with the employer.

The employee must submit a written notice of termination of employment contract to the employer no less than 15 days before the date specified by the employee as the date of termination of employment (notice period).

The by-law or the contract of employment may provide for a longer notice period, however not longer than 30 days.

TERMINATION BY EMPLOYER

The employer may terminate the contract of employment with an employee for just causes relating to the employee's working ability or his/her conduct, as follows:

1. if the employee fails to achieve work results, or lacks the required knowledge and skills to perform his/her jobs;
2. if a final judgement has been rendered against the employee for a criminal offence committed at work or in relation to work;
3. if the employee fails to return to work with the employer within 15 days of the expiry of discontinuation of employment or unpaid leave;
4. if the employee, through his/her fault, should violate a work duty, particularly in cases of:
 - a) careless or negligent job performance;
 - b) abuse of position or encroachment of powers;
 - c) inappropriate and irresponsible use of work assets;
 - d) failure to use or inappropriate use of the provided personal protective equipment or means at work;
 - e) other violations of work duty provided under the by-law or the employment contract.
5. if the employee should breach work discipline, particularly in cases of:
 - a) unjustified refusal to perform tasks and carry out the employer's orders;
 - b) failure to provide certificate of temporary inability to work;
 - c) abuse of the right to leave due to temporary inability to work;
 - d) coming to work under the influence of alcohol or drugs, or using

alcohol or drugs during work, which affects or may affect work performance;

e) provision of false data that was decisive for entering into employment relation;

f) refusal to take a test of medical fitness in cases where the employee works at a position entailing increased risk, which requires special medical fitness;

g) failure to observe work discipline prescribed under the employer's by-law, or any conduct that would preclude further work with the employer.

h) refusal to comply with the employer's request to perform analysis under Item d,

6. if due to technological, economic or organisational changes, certain job becomes redundant, or the scope of work is reduced;

In case of termination of employment contract on this ground, the employer is obligated to pay to the employee a severance which cannot be lower than the sum of one third of the employee's salary for each full year of past employment with the terminating employer.

7. if the employee should refuse to conclude an amendment to the contract of employment.

REQUIREMENTS FOR TERMINATION OF EMPLOYMENT CONTRACT PRIOR TO EXPIRY OF EMPLOYMENT RELATION

- PROCEDURE PRIOR TO TERMINATION OF EMPLOYMENT RELATION

Before terminating an employee's employment contract due to a violation of work duty or discipline, the employer is required to warn the offending employee in writing of the existence of grounds for dismissal and to allow him/her no less than eight days to respond to the warning.

The warning must state grounds for dismissal, facts and evidence of there being grounds for dismissal, and the deadline for the employee to respond.

The employer may terminate the employment contract with an employee in case the employee has failed to achieve work results or lacks necessary knowledge and skills required for his/her job, providing that the employer has previously provided such employee with a written notice specifying omissions in his/her work and allowing a reasonable period for work improvement, and providing that the employee has failed to improve his/her work within the period allowed.

DEADLINE FOR TERMINATION

The employer may terminate a contract of employment due to a violation of work duty or work discipline and underperformance within six months of becoming aware of the facts constituting grounds for dismissal, and within one year from the occurrence of such facts.

The employer may terminate a contract of employment due to a criminal offence committed at work by not later than expiry of the statute of limitations for such criminal offence under the law.

MANNER OF SERVING TERMINATION

Termination of an employment contract must be made in a written decision containing a statement of reasons and instructions on legal remedy.

The decision must be served on the employee in person, at the employer's premises, or at the employee's permanent or temporary address.

If the employer is unable to serve the decision on the employee in person, he must draw up an official note to that effect and post the decision on dismissal on the employer's notice board. Upon expiry of eight days of being so posted, the decision is considered to have been served.

DISCIPLINARY LIABILITY OF EMPLOYEES AND DISCIPLINARY MEASURES

In case of a violation of work duty or work discipline, when the employer believes that there are extenuating circumstances or that the nature of the violation does not warrant dismissal, the employer may impose disciplinary measures against the employee, rather than dismiss the employee. The law provides for the following disciplinary measures:

1. temporary suspension from work without pay lasting between one and 15 working days;
2. fine of up to 20% of the employee's base salary in the month when it is imposed, for up to three months;
3. final reprimand before dismissal stating that the employer will terminate the employee's employment contract without further warning, if the employee should repeat the same violation of work duty or work discipline in the following six months.

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