

TSG



ADVOKATSKA KANCELARIJA
RECHTSANWÄLTE
LAW OFFICE

GUIDE TO

LABOUR LAW

LEGAL FRAME - SERBIA



TYPES OF EMPLOYMENT RELATIONSHIPS ACCORDING TO DURATION

Employment relationship may be concluded for:

- **indefinite term**
- **fixed term.**

An employment contract may be concluded for a definite period, for entering an employment relationship which duration is predetermined by objective reasons justified by the deadline, the completion of a specific task or the occurrence of a specific event, during the existence of those needs.

Fixed-term employment relationship with the same employee may last, with or without interruptions, up to 24 months (this is maximum duration of fixed-term employment relationship).

Exceptions to the maximum duration of fixed-term employment relationships are:

1. necessity of replacement of a temporarily absent employee, until his/her return;
2. for work on a project which duration is predetermined, up to the project's completion;
3. with a foreign citizen, on a basis of a work permit in accordance with the law, for a period no longer than the validity of the permit;
4. for work on the jobs at a newly established employer, which registration with the competent authority at the time of the entering into the employment contract is no longer than one year, for a period of up to 36 months;
5. with an unemployed person who lacks up to five years to fulfil one of the conditions for old-age retirement, for a maximum period until the condition is met, in accordance with pension and disability insurance regulations.

Upon the expiry of the term of the employment contract from points 1-3, the employer may enter into a new fixed-term employment contract with the same employee, on

the same or a different legal basis, in accordance with Article 37 of the Labour Law.

PROBATIONARY PERIOD

The purpose of probationary period is to determine whether the employee's abilities are suitable for one or more related or associated jobs determined by the employment contract.

Probationary period may last maximum 6 months.

Prior the expiry of the probationary period, the employer or the employee may terminate the employment contract with a notice period of no less than five business days. The employer is obligated to elaborate the termination of the employment contract.

TYPES OF WORKING HOURS

- Full-time working hours (36-40 hours per week)
- Part-time working hours (shorter than full-time work)
- Reduced working hours (jobs with increased risk, minimum 30 hours per week)
- Overtime (cannot exceed 8 hours per week)
- Night work (work performed from 22 p.m. to 6 a.m.)
- Shift work (organization of work, with several employees performing the work in line with the determined schedule).

TYPES OF BREAKS

REST DURING WORK (BREAK DURING THE WORKING DAY)

An employee who works at least 6 hours is entitled to a break during work in the duration of minimum 30 minutes.

An employee who works more than 4 but less than 6 hours is entitled to a break during work in the duration of minimum 15 minutes.

An employee who works more than 10 hours a day is entitled to a break during work in the duration of minimum 45 minutes.

DAILY REST

An employee has the right to rest of at least 12 hours without interruption within 24 hours)

In the event of a redistribution of working hours, an employee has the right to rest of at least 11 hours without interruption within a period of 24 hours.

WEEKLY REST

An employee is entitled to weekly rest of at least 24 consecutive hours.

The weekly rest is usually used on Sundays. However, the employer may also designate another day of the week for the weekly rest period if the nature and organization of work require so.

ANNUAL LEAVE

An employee is entitled to an annual leave of at least 20 working days in each calendar year.

The length of the annual leave is determined by increasing the statutory minimum of 20 working days based on contribution to work, working conditions, work experience, professional qualifications and other criteria established by a general enactment or an employment contract.

An employee cannot waive the right to annual leave, nor can this right be denied or replaced with a monetary payment, except in the case of termination of employment. In such case, the employer is obligated to pay an employee who has not used his/her annual leave, in whole or in part, a monetary compensation in lieu of annual leave, in the amount of average salary in the previous 12 months, proportionally to the number of unused annual leave days.

TYPES OF LEAVE

PAID LEAVE

The employee is entitled to absence from work with payment of salary compensation (paid leave) for a total duration of up to five working days in a calendar year, in the following cases:

1. marriage;
2. wife's childbirth;
3. serious illness of a close family member; and
4. in other cases, determined by the general enactment and the employment contract.

The duration of paid leave is determined by the general enactment and the employment contract. Additionally, the employee is also entitled to additional paid leave of:

1. five working days for the death of an immediate family member; and
2. two consecutive days for each voluntary blood donation, including the day of the donation.

UNPAID LEAVE

The employer may grant the employee leave without payment of salary compensation (unpaid leave). In such case, the employee's rights and obligations under the employment relationship are suspended during the unpaid leave, unless otherwise specified for individual rights and obligations by the law, general enactment or employment contract.

SALARY, SALARY COMPENSATION, OTHER EARNINGS

SALARY

An employee is entitled to appropriate salary, determined in line with the law, general enactment and employment contract.

An employee's salary consists of:

- salary for work performed and time spent at work, which comprises:

base salary (determined by the employment contract, based on the conditions required for work on the jobs for which the employee entered into the employment contract, determined by the rulebook, and time spent at work),

work performance related part of salary (determined based on quality and volume of work performed as well as the employee's attitude towards work duties),

increased salary (for work on the public holiday which is non-working day – at least 110% of basis; for night work, which is not evaluated in base salary – at least 26% of basis; for overtime work – at least 26% of basis; for time spent at work for each full year of work in the employment relationship with the employer – at least 0.4% of basis);

- salary **based on the employee's contribution to the employer's business success** (awards, bonuses, etc.);
- **other earnings** based on the employment relationship, in accordance with the general enactment and the employment contract.

SALARY COMPENSATION

An employee is entitled to salary compensation:

1. in the amount of the average salary for the previous 12 months, for absence from work during the public holiday that is non-working day, annual leave, paid leave, military exercises, and response to a call from a government agency;
2. during absence from work due to temporary inability for work for up to 30 days: at least 65% of the average salary in the 12 months preceding the month in which the temporary inability for work commenced (which cannot be lower than minimum wage), if absence from work is caused by an illness or injury outside of work, as well as at a rate of 100% average salary in the 12 months preceding the month in which the temporary inability for work occurred (which cannot be lower than minimum wage), if the inability for work is caused by a work-related injury or occupational disease, unless otherwise provided by law;
3. at least in the amount of 60% of the average salary in the previous 12 months (which cannot be lower than minimum wage) for the period of work interruption, or reduction of volume of work that occurred without the employee's fault, for a maximum of 45 working days in a calendar year;

4. in the amount determined by a general enactment and the employment contract for the period of work interruption that occurred due to an order from a competent state authority or the employer's competent body for failure to ensure safety and protection of life and health at work, which is a condition for the continued performance of work without endangering the lives and health of the employees and other persons, and in other cases, in accordance with the law.

REIMBURSEMENT OF EXPENSES

An employee is entitled to reimbursement of expenses in accordance with the general enactment and the employment contract, namely:

1. for commuting to and from work, in the amount of the price of a ticket in public transportation, if the employer has not provided its own transportation;
2. for time spent on a domestic business trip;
3. for time spent on a business trip abroad;
4. for accommodation and meals for work and stay in the field, if the employer has not provided the employee with accommodation and meals free of charge;
5. for meals during work, if the employer has not provided this benefit in another way;
6. for allowance for use of annual leave.

Incomes from points 1-4 do not have the character of salary.

OTHER EARNINGS

The employee is entitled to other earnings:

1. retirement severance, in an amount of at least two average salaries – this retirement severance is not considered as salary;
2. reimbursement of funeral expenses for the employee, in the event of the death of a member of the immediate family, and for immediate family members in the event of the employee's death;

3. compensation for injury at work or an occupational disease.

Average salary for the purposes of point I is the average salary in the Republic of Serbia according to the latest published data from the statistical authority.

TERMINATION OF EMPLOYMENT RELATIONSHIP

REASONS FOR TERMINATION OF EMPLOYMENT RELATIONSHIP

Employment relationship is terminated:

1. upon the expiry of the term for which it was concluded;
2. when the employee reaches 65 years of age and has at least 15 years of social security insurance, unless the employer and the employee agree otherwise;
3. by the agreement between the employee and the employer;
4. by termination of the employment contract by the employer or the employee;
5. at the request of the parent or guardian of an employee under 18 years of age;
6. in case of death of the employee;
7. in other cases, set by the law.

The employee's employment relationship terminates irrespective of his/her will and will of the employer:

1. if it has been determined in the manner prescribed by the law that the employee lost work capability — as of the date the final decision establishing work incapability;
2. if, pursuant to the provisions of the law or a final decision of a court or other authority, he/she is prohibited from performing certain jobs, and it is not possible to provide the employee with other jobs - the date of delivery of the final decision;
3. if, due to serving a prison sentence, the employee must be absent from work for more than six months - the day the employee begins serving the sentence;

4. if a security, correctional, or protective measure is imposed on the employee for a period longer than six months and the employee must therefore be absent from work — the day the measure begins to be enforced;
5. in the event of the employer's closure of operations, in accordance with the law.

MUTUAL TERMINATION OF EMPLOYMENT

An employment relationship may be terminated by a written agreement between the employer and the employee, with the obligation for the employer to notify the employee in writing, prior to signing the agreement, about the consequences for the employee's rights in the event of or unemployment.

RESIGNATION BY THE EMPLOYEE

An employee has the right to terminate the employment contract with the employer.

The employee delivers a notice of termination to the employer in writing at least 15 days before the date the employee has specified as the date of termination of the employment relationship (notice period).

A longer notice period may be established by a general enactment or an employment contract, but not longer than 30 days.

TERMINATION BY THE EMPLOYER

An employer may terminate an employee's employment contract if:

- (i) there is a justified reason related to the employee's work ability and behaviour, namely:
 1. if the employee does not achieve work results or lacks the necessary knowledge and capabilities to perform the jobs on which the employee works;
 2. if the employee has been convicted by a final judgment for a criminal offense committed at work or in connection with work;
 3. if the employee does not return to work with the employer within 15 days from the expiry of a stay on the

employment relationship or unpaid leave;

(ii) if the employee, by his/her own fault, commits a breach of the following work duties:

1. if the employee performs his/her job duties in a dishonest or negligent manner;
2. if the employee abuses his/her position or exceeds his/her authority;
3. if the employee does not use or purposely use the provided tools or equipment for personal protection;
4. if the employee fails to use or uses provided personal protective equipment for an unintended purpose;
5. if the employee commits another breach of work duty determined by the general enactment or employment contract.

(iii) if the employee does not respect work discipline, such as:

1. if the employee unjustifiably refuses to perform the jobs and carry out the employer's instructions;
2. if the employee fails to provide a certificate of temporary disability;
3. if the employee abuses the right to leave due to temporary inability for work;
4. for coming to work under the influence of alcohol or other intoxicating substances, or for using alcohol or other intoxicating substances during work hours, which has or may have an impact on the job performance;
5. if the employee provided false information that was decisive for the establishment of the employment relationship;
6. if an employee who works in high-risk jobs, where a specific medical fitness is established as a special requirement for the job, refuses to undergo a medical fitness evaluation;
7. if he does not respect the work discipline prescribed by the employer's regulations, or if his/her

behaviour is such that he/she cannot continue working for the employer;

(iv) the employee's refusal to comply with the employer's request to undergo a medical examination as specified in point 4 above;

(v) if there is a justified reason related to the employer's needs, such as:

1. if, due to technological, economic, or organizational changes, the need to perform a specific job ceases or the volume of work is reduced – in this case, the employer is obligated to pay the employee severance, which cannot be lower than 1/3 of the employee's salary for each completed year of service with the employer where the employee is entitled to severance pay (and the predecessor employer and the employer's related person(s));
2. if the employee refuses to conclude an amendment to the employment contract in the cases prescribed by the Labour Law.

CONDITIONS FOR TERMINATION OF THE EMPLOYMENT CONTRACT PRIOR TO THE TERMINATION OF EMPLOYMENT

- PROCEDURE PRIOR TO END OF THE EMPLOYMENT RELATIONSHIP:

The employer is required to, before termination of an employment contract due to the employee's violation of a work duty or non-compliance and discipline, provide the employee with a written warning about the existence of the reason for the termination of the employment contract and allow the employee the warning to respond to the allegations from said warning within the deadline of at least eight days from the date of the delivery of said warning. The employer is required to state in the warning the grounds for termination, the facts and evidence indicating that the conditions for the termination have been met, and the deadline for responding to the warning.

The employer may terminate an employee's employment contract if the employee does not achieve work results or lacks the necessary knowledge and skills for the jobs he/she performs, provided the employer has previously given the employee a written notice regarding the deficiencies in the employee's work, with instructions and a reasonable period of time to improve the work, and the employee does not improve his/her work within the given period.

DEADLINE FOR GIVING A TERMINATION NOTICE

An employer may terminate an employee's employment contract for a violation of a work duty and non-compliance with work discipline as well as for failure to achieve work results or the lack of the required knowledge and capabilities for performing the jobs on which he/she works within six months from the date when becoming aware of the facts that are the basis for termination, or within one year of the occurrence of the facts that are the basis for termination.

An employer may terminate an employee's employment contract for a criminal offense committed at work no later than the expiration of the statute of limitations for that offense determined by the law.

SERVING OF A NOTICE ON TERMINATION OF EMPLOYMENT

The employment contract is terminated by a written decision, which must elaborate the reasons and must contain information about the right to appeal.

The decision must be delivered to the employee in person, at the employer's premises, or at the employee's address of residence or domicile.

If personal delivery was not possible, the employer is required to make a written record of it, in which case the decision on termination of the employment contract is posted on the employer's bulletin board and is considered delivered after expiry of eight days after the date of posting.

DISCIPLINARY RESPONSIBILITY OF THE EMPLOYEE AND DISCIPLINARY MEASURES

For a violation of a work duty or non-compliance with work discipline, the employer may, if it believes that there are mitigating circumstances or that the violation of a work duty or non-compliance of work discipline is of such a nature that the employee's employment should not be terminated, instead of the termination of the employment contract, impose one of the disciplinary measures prescribed by the law:

1. temporary suspension from work without payment of salary compensation, for a duration of one to 15 working days;
2. a monetary penalty of up to 20% of the employee's base salary for the month in which the monetary penalty is imposed, in a duration of up to three months;
3. a warning with a notice of dismissal stating that the employer will terminate the employee's employment contract without further warning if same violation of the work duty or non-compliance with work discipline is committed within the following six months.



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