

Leasing of Employees in Serbia



→ Marija Zdravković

Although the Serbian Labour Act fails to regulate the leasing of employees, it is tacitly being applied in practice by many employers irrespective of the open issues.

Legal framework

The Serbian Labour Act does not contain provisions regulating the leasing of employees, but it is being applied in practice and tolerated by the authorities as many employment agencies are active in leasing employees in Serbia. According to unofficial information, over 60 employment agencies in Serbia are providing the service of leasing employees, and more than 10,000 employees are being engaged through leasing.

It is expected that the new Labour Act, currently in preparation, will introduce the concept of leasing employees given that Serbia has recently ratified the International Private Employment Agencies Convention of the International Labour Organisation, which will be applied from March 2014. No information is yet available to the public.

Leasing of employees in practice

In practice, many employers are opting to engage their personnel through leasing to avoid the somewhat burdensome and restrictive provisions of the Labour Act, especially those regulating termination. Technically, leased employees are employed by the employment agency and simply perform their work at the premises of the employer leasing them. The employment agency, as the formal employer, remains fully liable for the leased employees, including with respect to employment termination (save for health and safety obligations, which remain also with the employer leasing the employees).

Therefore, as employees generally have a high success rate in disputes with employers, employers are more and more opting to engage personnel via leasing to avoid these and other risks.

Contractual relations

As the leasing of employees is not allowed per se, employers and agencies usually regulate their relations such: (i) by concluding a business-cooperation agreement through which the employer engages the agency to recruit employees, and (ii) agencies conclude the employment agreements with the employees, stipulating that the employees' place of work is the premises of the employer leasing them. The agencies then, based on the business-cooperation agreement, invoice their services to the employer monthly to compensate the costs of the salaries paid to the leased employees.

Under this option various modalities of contractual construction appear in practice. The best approach for an employer leasing the employees is to stipulate in the business-cooperation agreement with the employment agency that the agency, pursuant to the employer's request, will immediately remove the leased employee from their premises, and the leasing agency will remain responsible for dismissing the employee.

Aligned risks

Theoretically (having in mind that leasing employees is not allowed), in the event of a control, the labour inspector could order that employment agreements be concluded between such employees and the employer, and that employment agreements with the agency be terminated.

Many other open issues remain until this practice is covered in the Labour Act, such as whether the employee must, while working, comply with the internal regulations of the agency or of the employer, and whether the employee can be lawfully dismissed by the agency for breach of duties encompassed under the internal regulation of the employer. There has been no such case, so it remains to be seen how it will be dealt with.

Finally, having in mind the situation in practice and the fact that many well-known employment agencies are actively leasing employees in Serbia, it appears that the authorities are temporarily tolerating this practice until it is regulated in the New Labour Act.

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