Position Paper on Necessary Amendments to the Labour Act

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Introduction

General information

As the world economic crisis continues, economic circumstances in Croatia keep deteriorating. Croatia is in an unenviable position and the only thing that can stop or at least slow down its further economic and social downturn is an urgent implementation of structural reforms. A part of the structural reforms that can certainly boost the recovery of a stumbling economy refers to amendments in the area of labour-social legislation.

Inefficiency and segmentation of the Croatian labour market characterised, among other things, by a low rate of activity, high unemployment rate, long-term unemployment, high unemployment ratio of young people, difference in the position of employees with fixed-term and indefinite employment agreements, significant difference between public and private sectors, is one of the main factors of economic set-back, so amendments to the current labour-social legal framework are a necessity. Employers, faced with the lack of domestic and foreign investments, rigid labour legislation, extremely high labour costs and tax burden, cannot generate new workplaces and increase the labour force demand. Consequently, Croatia stands the risk of retaining the rank of a country with the lowest employment rate among the European Union Member States. Amendments to labour-social legislation and measures to reduce the burden of employers (of business) in Croatia would create preconditions for employment and stop the growing unemployment tendency.

Since Croatia is classified within a group of countries with an extremely rigid labour-social legislation (World Bank; IMF), we believe that there is significant room to make it more flexible in order to prevent further negative tendencies on the labour market and to eliminate obstacles from investing into the economy and its gradual recovery.

In the light of the accession of the Republic of Croatia into the European Union and following the practice of the European Union Member States that implemented reforms of labour-social legislation in order to mitigate the consequences of the economic crisis on their labour markets, the Croatian Government has commenced the process of amendments to the Croatian labour-social legislation framework which should culminate with the passing of the new Labour Act in the last quarter of this year.

Reforms focused on the labour market proposed by the Government should make Croatia's business environment more competitive. A more competitive business atmosphere would have a strong impact on attracting foreign investors, which would activate the wave of economic recovery. On the path to introduce changes on the labour market, to achieve a balance between the rights and obligations of employers and employees is a challenge standing before the Government. In this sense, proposals and recommendations given in this document represent our contribution and support to the Government's efforts in boosting the economy, in making business easier and increasing the number of workplaces.
If we look back to the experience of other European Union Member States that already introduced amendments to their labour legislation, four main areas can be identified that were made flexible or that reflect deregulation of the labour law:

- working hours,
- atypical forms of employment including employment agreements on a temporary basis,
- employment termination and
- industrial relations and processes.

All the implemented reforms aimed at boosting the economic growth, improving competitiveness, strengthening the degree of flexibility in labour-legal relations, increasing productivity and encouraging employment.

On the basis of discussions we had with the companies, members of our Chamber, representatives of employers and workers, agencies for temporary employment, experts for human resources capital, tax experts, consulting companies and representatives of academic community, we have come to the conclusion that amendments to the Croatian labour legislation exactly in these four identified areas, should they be implemented to their essence, could achieve the same effects they had in other European countries, being of crucial importance for the future of the Croatian economy and the development of the Croatian society.

In July 2012, the Act on Criteria for Participation in Three-Party Bodies and Representativeness for Collective Negotiation was passed, which declared null and void Art. 262 of the Labour Act, providing for the introduction of time limit of extended application of the collective agreement that expired or was cancelled until the date of concluding a new collective labour agreement, and that maximum three months upon expiry of its validity period i.e. three months upon expiry of the cancellation period.

By the end of February this year, the Government of the Republic of Croatia announced the first stage of amendments to the Labour Act, a final proposal of the Amendments to the Labour Act. The final proposal of the Act includes the amendments to regulations of the current Labour Act referring to the following:

- work on a temporary basis,
- collective termination of surplus employees,
- organisation of working time in terms of daily and weekly rest break
- cancellation of employment agreement due to unsatisfactory probationary period
- overtime work
- agencies for temporary employment
- European works councils

In addition to the aforementioned amendments announced by the Government, AmCham’s standpoint is that there is room for additional improvements in order to create preconditions for a flexible and attractive labour market for investors in Croatia, thus mitigating the consequences of the economic crisis. For this reason, AmCham Croatia identifies in this document crucial problematic areas and presents actual recommendations to eliminate obstacles, with the aim to help create a flexible and competitive labour market.
Determination of salary and its definition

Basic and average salary

AmCham's standpoint is that stimulation and bonuses need not be included in the basic salary amount or be a part of an average salary.

Article 83 paragraph 3 of the Labour Act defines salary paid to an employee for work as the basic salary and all additional contributions of any kind which are paid by the employer directly or indirectly, in money or in kind to employee for performed work.

In the time of economic crisis, it is necessary to offer a possibility of making salaries for performed work flexible. Salaries should be adaptable to the real economic situation. Rules need to be defined clearly in cases when salary is reduced due to temporary introduction of shorter working weeks or objectively conditioned individual or collective productivity, and then facilitate the procedure of amendments to employment agreement in the part related to salary payment. Furthermore, the Labour Act does not enumerate precisely the items of basic salary; this issue is being regulated by collective agreement or individual employment agreement, and if such regulation is missing, the employer regulates this issue by internal regulation.

Due to the extensive (maximalist) interpretation of an already widely set legal norm, stimulations (bonuses) and supplements to the basic salary are being regularly calculated as a part of an average salary.

It turned out that such practice of calculating stimulations and supplements to the basic salary as a part of an average salary has actually resulted in avoiding the payment of stimulations, i.e. it was a big disincentive for the employers as they were exposed to uncontrolled costs of an increased payment of average salaries. Excessive burden on the employer caused by the application of the current norm and practice based on its interpretation, and consequently the reduction of possibilities to employ additional workers, is especially obvious in the field of calculating salary compensation during sick leave (Article 87 of the Labour Act), annual leave (Article 60 of the Labour Act), unused leave (Article 61 of the Labour Act) and severance payment (Article 119 of the Labour Act).

AmCham's standpoint is that the payment of stimulations and other supplements that do not represent regular income of an employee but their payment is conditioned by reasons on a one-time basis or variable business effects, related to achieving specific, predefined, measurable goals - results, should not be included in the basic salary amount as a compensation for regular work, so we propose the following amendments in defining the meaning and the amount of salary in Art. 83.
Proposal of amendments to the Labour Act:

*Paragraph 3 Art. 87 of the Labour Act:*
Salary from paragraph 1 of this Article encompasses the basic salary and all additional contributions of any kind which are paid by the employer directly or indirectly, in money or in kind, to an employee for performed work. Average salary encompasses the basic salary paid for regular work.
Limitation of the number of days spent on sick leave on the cost of the employer

Article 87, paragraph 1 of the Labour Act stipulates that employees are entitled to salary compensation for periods in which they are not working due to justified reasons stipulated by law, other regulations or collective agreement. Furthermore, paragraph 2 states that the law, other regulations or collective agreement stipulate the period for which salary compensation is being paid and borne by the employer. In paragraph 5 the Legislator defines that unless otherwise stipulated by the Labour Act or other laws, other regulations, collective agreement, internal regulation or employment agreement, employees are entitled to salary compensation in the amount of an average salary paid in the previous three months.

The current legal solution, in particular in case of frequent sick leaves of employees, represents a significant financial burden on the employer, which can result in disturbances of regular business. Current practice of calculating stimulations and supplements to the basic salary as a part of an average salary that represents the basis for defining salary compensation actually results in avoiding the payment of stimulations, i.e. it is a disincentive for the employers as they are exposed to uncontrolled costs of increased payment of an average salary. By amendments to paragraph 5, the calculation of an average salary would no longer include the payment of stimulations and other supplements that do not represent employees' regular income but their payment is rather motivated by reasons on a one-time basis and temporary (irregular) business effects. Therefore, AmCham proposes the following amendments.

Proposal of amendments to the Labour Act:

Paragraph 2 Art. 87 of the Labour Act:
The law, other regulation, collective agreement or employment agreement stipulate the period of time for which salary compensation is being paid and borne by the employer, and it cannot exceed 30 days per year. In our opinion, this provision needs to be entered in the Compulsory Health Insurance Act as well.

The limitation of the number of days per year to be borne by the employer is also applied by Slovenia. The first 30 days of employee's sick leave shall be borne by the employer, in the amount of 80% of the salary paid in the previous month. Cost of a sick leave exceeding 30 days shall be borne by the state. In total, the cost of a maximum of 120 days of sick leave in one calendar year per employee shall be borne by the employer.

Paragraph 5 Art. 87 of the Labour Act:
Unless otherwise stipulated by the Labour Act or other law, other regulation, collective agreement, internal regulation or employment agreement, employees are entitled to a salary compensation in the amount of an average salary received for regular work in the previous three months.
Notice periods and reasons for the termination of employment agreement

Sick leave during notice period

AmCham's standpoint is that sick leave started at the time of the notice period cannot influence the progress of the notice period.

Article 113 Paragraph 1 of the Labour Act stipulates that notice period shall commence on the day of delivery of dismissal letter. Pursuant to paragraph 2 of the same Article, notice period shall not run during pregnancy, maternity leave, parent leave, adoption leave, half-time work, reduced working hours for intensified child care, pregnancy or nursing leave, leave or reduced working hours to care for a child with severe development handicaps according to a special regulation, temporary incapacity for work, annual leave, paid leave, national defence service, and other cases of justified absence of employee from work, stipulated by this Act or other laws.

Sick leaves are often misused ('faking sick leaves') in cases with employees whose agreement has been terminated: a person that has received a termination notice requests a sick leave in order to cause a delay of the notice period and prolong the employment duration. As an example, one employer has experienced that 45 out of 52 employees who received a termination notice requested a sick leave on the last day before the expiry of the notice period. Employees spent on average 4 months on a sick leave in order to be entitled to HRK 6,400 tax-free for a full year of service (which they were entitled to according to the collective agreement). Furthermore, as entitled by the collective agreement, they receive HRK 2,500 one-off compensation for the same sick-leave (for a sick leave exceeding 90 days).

In such cases, the employer is placed in an extremely unfavourable position as he/she is not able to foresee the employment agreement termination costs, which incurs direct damage to the entire business.

Unlike the current rigid legal solution, judicial practice does not support the attitude that taking a sick leave during the notice period necessarily causes a delay of the notice period. Namely, the Supreme Court of the Republic of Croatia expressed its legal interpretation in the decision Revr-615/2008 as of 18 February 2009, stating that, in case when an employee, according to the termination notice, is entitled to be absent from work during the notice period, the provision of the Act stopping the notice period during sick leave cannot be applied.

Therefore, AmCham proposes the following amendments to the disputed Article:
Proposal of amendments to the Labour Act:

*Paragraph 2 Art. 113 of the Labour Act:*
Notice period shall not run during pregnancy, maternity leave, parent leave, adoption leave, half-time work, reduced working hours for intensified child care, pregnancy or nursing leave, leave or reduced working hours for parents using the entitlement to care for a child with severe development handicaps according to a special regulation, temporary incapacity for work, annual leave, paid leave, national defence service, and other cases of justified absence of employee from work, stipulated by this Act or other laws, if an employee submitted such a request to the employer before receiving a termination notice.

*Termination conditioned by inappropriate behaviour of the employee*

In our opinion, it is necessary for employers to be obliged to define by internal regulations what can constitute an especially grave breach of employment, depending on the type of activity.

*Simplification of termination procedure conditioned by personal reasons (successive poor evaluation)*

In our opinion, it is necessary to make regular termination of employment agreement substantially more flexible.

For example, in the Austrian law regular termination is possible without any rationale, with due observance of the provisions on notice periods and severance payment. Hereby, employers are obliged to follow a specific procedure (e.g. counselling with workers' council and the like); however, this procedure in general is much more acceptable and flexible than the one in Croatia. Regular termination can be questioned before the court in a limited number of cases (if it is e.g. contrary to the legal order or unacceptable in a social sense). Extraordinary termination can be questioned before court, but even if the court confirms that extraordinary termination was illegal, employment is considered to have ended through regular termination.
Flexible working hours and the possibility of flexible redistribution of working hours

Due to the economic situation and the dynamics of business processes in some industries, it is necessary for the law to introduce the possibility of flexible working hours, as well as the possibility of flexible redistribution of working hours in order to enable the organisation of working hours to successfully follow various business needs and requests regarding the organisation of business processes, all in compliance with the EU Directive 2003/88 on certain aspects of the organisation of working hours. Hereby, deviation from full- or part-time working hours per employee within a week, over 40 and not exceeding 48, due to flexible organisation of working hours on an individual level would not necessarily be considered overtime work (variable weekly working hours). Amendments hereto would cause a substantial simplification of regulations referring to the employee's working hours records.

Proposal:
Maximum 48 hours per week are to be treated as variable weekly working hours. On an annual level, the number of working hours is to be balanced up to 160 hours per month.

Reducing a regular working week
AmCham welcomes the Government's initiative to regulate the issue of a shorter regular working week (colloquially called 'free Friday') by a separate law. AmCham's standpoint is that the interests of both parties are to be precisely protected thereby.

Redistribution of working hours
AmCham members pointed out on several occasions that the issue of overtime work presents one of the greatest problems they are faced with. In the first round of Amendments to the Labour Act, the Government proposed to cancel the number of overtime hours per month and to keep the limitation of the number of overtime hours on a weekly and an annual level, thus providing a certain contribution to the flexibilisation of previously extremely rigid regulations regarding overtime work. Still, in AmCham's opinion this area can be further improved in line with the possibilities offered by the EU Directive 2003/88 on certain aspects of the organisation of working hours. Namely, the Directive stipulates an average weekly (7 days) working hours of a maximum 48 hours, but there is a possibility of inserting a so-called 'opt-out' clause into the national legislation in case when such limitation of working hours is not applied with the consent of an employee.
AmCham proposes the following:

- To insert the 'opt-out' clause (applied in 16 EU countries to a greater or lesser extent) into the Labour Act in order to be able to respond adequately to challenges in business fluctuations and thus preserve workplaces via mechanisms opening way to cooperation and co-decisions by employers and employees as regards the organisation of working hours and business process. This is particularly important for small and medium enterprises and their employees. Hereby, the law should not stipulate overly complex and bureaucratised procedures for the application of this clause, but rather facilitate its application in practise. This would be to the benefit of both sides: employers would benefit from achieving better business results, when such organisation of working hours is justified because of the conditions on the market, and employees would benefit from gaining flexibility in terms of organisation and management of one's own working hours.

- We also propose for the Government to consider the possibility of legalizing alternative compensation for overtime work in terms of entitlement to use free days instead of monetary compensation for overtime hours, which has proved to be a rather widespread practice among some employers, although there has been no legal basis for it so far.

We propose for Art. 45 of the Labour Act regulating overtime work to be amended with new provisions enabling the application of the 'opt-out' clause.

Proposal of amendments to the Labour Act:

Art. 45 of the Labour Act

Exceptionally, with the explicit consent of an employee, it is permitted to tolerate a deviation from maximum overtime hours on an annual level from paragraph 2 of this Article as stipulated by the law, but in a way to strictly limit the number of overtime hours above the stipulated legal maximum to the amount of 230 hours per year. In any case, the employer must receive a prior written consent of an employee for overtime work exceeding the maximum of 180 hours per year as stipulated by the law.

If an employee refuses to give his/her consent to overtime work exceeding the maximum from paragraph 2 of this Article as stipulated by the law, he/she cannot be exposed to any negative consequences whatsoever due to his/her refusal of consent.

The consent for overtime work exceeding the maximum as stipulated by the law remains valid for ___X_ months.

The employer is obliged to keep records on all employees who gave their consent for overtime work exceeding the maximum as stipulated by the law and the records on the number of overtime hours performed above the maximum of 180 hours per year as stipulated by the law.
We propose to insert paragraph 2 of Art. 86

*Article 86 of the Labour Act*

In case of overtime work, internal regulations can provide for the agreement between the employer and an employee to grant the employee paid free days in proportion to the number of performed overtime hours instead of giving the employee an increased salary for the overtime work, i.e. to give an employee an increased salary for a part of performed overtime hours, and grant him/her paid free days for the rest.
Employment agreement related to separate place of work - work at home

For the employer, it is extremely important to be able to manage premises and costs related hereto, which is especially relevant in times of economic crisis. One of the elements of flexible approach to the management of resources is the organisation of work at a separate place, i.e. work at home. Although Art. 15 of the current Labour Act provides for the possibility of working at home, it is almost impossible to fulfil the actual requirements in terms of obligatory contents of the written employment agreement at a separate place of work, both on the employer's and an employee's side. This refers in particular to the fulfilment of requirements regarding protection at work and the records of working hours of an employee working at home.

As this form of work is readily accepted by employers and employees as well, AmCham engages in implementing the following:

- To simplify regulations on the records of working hours at home in the way to permit employers to define by internal regulations the way of keeping records of working hours (performance effect vs. formal presence)

- To stipulate the minimum of conditions that housing premises have to meet in order to serve as premises to perform work and to enable authorised agencies for protection at work to confirm the fulfilment of minimum of such conditions before the start of work at home.
Severance pay system

Prolongation of qualification period for severance pay entitlement

Pursuant to Article 119 of the Labour Act, the employee whose agreement is terminated by the employer after two years of continuous work, unless termination is on grounds of the employee's conduct, will be entitled to severance pay in the amount which will be determined taking into account the duration of previous continuous employment with that employer. As severance pay is intended to help an employee in a situation of unexpected termination of employment and to overcome the period of finding a new job, similar to the notice period with compensation during this period, this social right to be borne by the employer should certainly be proportionate to the purpose and duration of the employment agreement on a temporary basis (whereby an employee is aware of the agreement termination as of the day of entering into the agreement). Furthermore, a shorter employment period with the employer does not represent a period in which it is possible to acquire resources to cover this kind of risk.

Therefore, AmCham supports the attitude to prolong the qualification period to acquire the entitlement to severance pay in the following way:

paragraph 1 Art. 119 of the Labour Act

The employee who is dismissed by the employer after four years of continuous work, unless dismissal is on grounds of the employee's conduct will be entitled to severance pay in the amount which will be determined taking into account duration of previous continuous employment with that employer.
Temporary employment agencies

Agreement on assignment of employees

AmCham proposes to amend the word agreement to the contract on assignment of employees.

The word agreement in legal literature is being used for legal affairs on the basis of which parties in legal affairs (contracting) agree on disputable matters. The contract between an agency and an user is a contract on providing the services and it does not represent a disputable relationship.

Proposal:

Article 24 of the Labour Act
To substitute the Agreement on Assignment of Employees with the Contract on Assignment of Employees.

Salary compensation of assigned employees while unassigned for work

Upon termination of the assignment period of an employee to the user, the agency has a business related unjustified obligation to pay to the employee the salary compensation in the amount of an average salary paid to him in the previous three months, Article 87, paragraph 5).

This salary was determined by the user rather than the agency according to its business possibilities, nor does the agency carry out the activity by which the salary amount has been determined.

Article 26, paragraph 3 of the Labour Act
In the period when the employee is not assigned to the user, the employee employed with the agency is entitled to salary compensation in the amount as provided by Article 87 paragraph 5 of this Act.

Proposal of amendments:

(3) In the period when the employee is not assigned to the user, the employee employed with the agency is entitled to salary compensation in the amount of minimum salary amount as provided by special regulations.

Minimum conditions for equal rights of assigned employees

AmCham proposes to define minimum conditions for equal rights of assigned employees instead of the provision "and other conditions" in Article 26 of the Labour Act, paragraph 5:

Article 26 of the Labour Act

(5) Agreed salary and other working conditions of the assigned employee shall not be determined in the amount lower, or more unfavourable than the salary, or other working conditions of the employee employed by the user on the same jobs that would be achieved by an assigned employee if he/she had concluded an employment agreement with the user.

(6) If the salary, or other working conditions cannot be established in accordance with paragraph 5 of this Article, they will be determined by the agreement on the assignment of employee.
AmCham proposes an amendment to paragraph 5 and new paragraphs 7, 8 and 9:

(5) **Basic** working conditions of the assigned employee shall not be determined as more unfavourable than basic working conditions of the employee employed by the user on the same jobs that would be achieved by an assigned employee if he/she had concluded an employment agreement with the user for the performance of the same job in an equal agreement period.

(7) Basic working conditions as provided in paragraph 5 of this Article refer to: salaries, working hours, leaves, breaks, work at night and on holidays.

(8) Agreed salary of the assigned employee shall not be determined in the amount lower than the salary for regular work performance of the employee employed by the user for an equal period on the same jobs.

(9) The user undertakes to provide equal treatment regarding the use of rights and possibilities by assigned employees as by the employees employed by the user with regard to: protection of a pregnant employee, nursing employee, under-age employee, non-discrimination on grounds of sex, race or national origin, religion, belief, invalidity, age and sexual orientation.

**Exposition**

Proposed amendments are given in compliance with the provisions of Directive 2008/104/EC of the European Parliament and the European Council passed in order to encourage temporary employment through agencies as a way of boosting employment with the necessary provision of basic rights of employees in the employment relationship and equal treatment in comparison with employees employed by the user on same jobs. Necessary difference in the employment relationship of the assigned employee (on a temporary basis), of the employee employed by the user (on a long-term basis), as well as the preservation of basic rights of the employee in an employment relationship regardless of the type of work is taken into account.

**Termination of the employment agreement for temporary performance of jobs in case of cessation of user's necessity**

Extraordinary termination of assignment of an employee to the user causes obligation for the agency to maintain an employment agreement with the employee who does not perform jobs for which he/she entered into the employment agreement with the agency. The agency might try to assign such employee to another user, but if it fails to do so, it is not justified to determine a ban on the termination of employment agreement to the employee who evidently does not perform his/her jobs. If the agency concluded an employment agreement with the employee to be assigned to a particular user and this particular user no longer has the need for employees, the agency does not have to try to assign the employee to another user.

**Article 27, paragraph 3 of the Labour Act**

(3) Cessation of necessity for the assigned employee by the user before the expiry of the period of time for which he/she has been assigned shall not be a reason to terminate the employment agreement for a temporary job performance.

**Proposal of amendments:**

(3) Cessation of necessity for the assigned employee by the user before the expiry
of the period of time for which he/she has been assigned shall not be reason to terminate the employment agreement for a temporary job performance, unless the agency cannot assign the employee for work to another user or the employment agreement for a temporary job performance was concluded in order to assign the employee to a user whose necessity for the assigned employee has ceased.

Protection of rights of assigned employees

It is currently not provided by the Act that it is not the agency or the user but the "employer" who is defined as the person for the assigned employee to refer to with a request for the protection of rights (the user is considered to be the employer in some cases). The provision refers to requests of assigned employees during assignment period. The agency has neither legal nor actual possibility to control the working process of the user nor it is authorised to identify disputable circumstances, so it is proposed to solve the requests regarding the employment relationship where it appears i.e. at the user.

Article 27, paragraph 4 of the Labour Act
(4) The assigned employee who is of the opinion that during his/her work with the user any of his/her rights from the employment relationship have been breached, he/she will receive protection of the breached right at the employer in the manner determined by Article 129 of this Act.

Amendment proposal for imprecise provision of the Act:
(4) The assigned employee who is of the opinion that during his/her work with the user any of his/her rights from the employment relationship have been breached, he/she will receive protection of the breached right at the user if the breach refers to job or employment at the user in the manner determined by Article 129 of this Act. The employee shall inform the agency without delay of the request for the protection of rights submitted to the user.

Duration of employee assignment

It is proposed to prolong the duration of assignment of the employee to the user from one to three years maximum. The proposal is in compliance with the Directive 2008/104/EZ on employment through agencies for temporary employment, with the practice of European countries, and with the provisions of the Croatian Labour Act on the duration of employment agreement on a temporary basis (Article 10, paragraph 2). Furthermore, it is proposed to delete the requirement of performing the "same" jobs at one user. The user may need the performance of various jobs that can be performed by the same person so the former limitation prevents the continued work of an employee.

Article 28 of the Labour Act
(1) The Agency shall not assign an employee to the user for performance of the same jobs for an uninterrupted period of time exceeding one year.

Proposal of amendments:
(1) The Agency shall not assign an employee to the user for performance of jobs for an uninterrupted period of time exceeding three years.
**Indemnity**

AmCham proposes to determine the right to reimbursement by the user in case of joint liability of the agency.

It is proposed to exclude the agency from responsibility in cases in which the agency could not have influenced in any way whatsoever the performance of jobs at the user; the way of determining jobs and the control of jobs at the user is not the agency's contracting obligation from the agreement on assignment of employees; therefore, this liability is imposed as contrary to the purpose and nature of this agreement.

The provision on the basis of which the legal position of the assigned employee with the right to indemnity by the agency or the user shall be amended in the way to introduce the agency's entitlement to reimbursement to the user. The agency has neither legal nor actual possibility to influence the indemnity suffered by the assigned employee at work at the user, because the work at the user is under his/her control and organisation, the user is obliged to provide for working resources and is liable for his/her business activity.

**Article 31 of the Labour Act**

(2) Any damage caused by assigned employee at work or in connection to work at the user shall be the liability of the agency in accordance with the general regulations of mandatory law.

(3) If the assigned employee suffers damage at work or in connection to work at the user, he/she may claim indemnity from the agency or the user in accordance with the provision of Article 103 of this Act.

**Proposal of amendments:**

(2) Any damage caused by assigned employee at work or in connection to work at the user shall be the liability of the agency in accordance with the general regulations of mandatory law. The agency shall not be liable for damage caused by assigned employee at work or in connection to work at the user because of failure in work supervision, control, improper working instructions or the failure in user's obligations.

(3) If the assigned employee suffers damage at work or in connection to work at the user, he/she may claim indemnity from the agency or the user in accordance with the provision of Article 103 of this Act. The agency shall be entitled to reimbursement to the user who, in relation to this liability is considered to be the employer of the assigned employee.
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