Position Paper on the Necessary Changes to the Labor Act

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AmCham

American Chamber of Commerce in Croatia Američka gospodarska komora u Hrvatskoj

Contents

Introduction

General Information

The Labor Act, as defined in the first article of the Act, regulates employment in the Republic of Croatia. The Act regulates the rights and obligations of employers towards the employee and vice versa, the employee to the employer, which defines relations on the labor market in a legal sense.

The labor market is a sensitive system which is constantly changing. The last significant changes to the Labor Act were adopted in August 2014, after which smaller amendments were made to the Act. The amendment from 2014 transposes relevant European Union Directives on labor legislation into the Croatian legal order. The aim of the government was to amend regulations concerning fixed-duration labor, collective staff redundancy termination, organization of work time in relation to the duration of daily and weekly rest, overtime, temporary employment agencies and termination of work contracts for failure during a trial period.

The circumstances in which amendments were made to the Act differ significantly from the current ones. Croatia was a full member of the European Union for only a year and the consequences of the long economic crisis were in large part still felt, which had a negative influence on the labor market. Croatian employees did not have access to the labor markets of most members of the European Union. The Gross Domestic Income in 2014 was not growing. For comparison, the unemployment rate in 2014 was 10% higher than 2019, 17.2% compared to 6.8%.[1]

Croatian economic recovery consequently resulted in an increase in demand for a labor force, whose supply is severely hampered by a significant outflow of the active labor force from Croatia to more competitive European labor markets. According to AmCham's *Survey of the Business Environment in Croatia* (February 2020) 71% of employers who are members of the Croatian Chamber of Commerce plan to employ new employees in the next 3 years. The outflow of the labor force from Croatia, which, along with an increase in the need for said labor force, will slow economic growth and cause an increase in the price of labor, which will weaken Croatia's competitiveness along with the existing high tax burdens on labor.

AmCham considers that favorable conditions have arisen for change of not just the Labor Act, but also changes in how the entire labor market functions through a range of reforms which would contribute to a more functional system.

In the circumstances brought about by the COVID-19 pandemic, the need has arisen for a more flexible labor law framework that could help regulate employment in exceptional circumstances (such as a disease pandemic, but also those of other types and causes) without special regulations or ad hoc measures being required. One such example is the introduction of "furlough leave" in the labor law, modeled after some comparative systems such as the one in the Republic of Slovenia.

[1] Eurostat, https://ec.europa.eu/eurostat/databrowser/view/tipsun20/default/table?lang=en Accessed on: 21 February 2020

In addition, it is exactly the situation in the past two months (with a possible prolongation), where the only possible form of work was working from home, that demonstrated not only the willingness of employers and employees to operate in more flexible forms of work, but also the practical feasibility and benefit of such a form of work, based on a sample of a large majority of workers in the Republic of Croatia. However, the existing legal framework on work from home has proven to be aggravating and difficult to implement in the circumstances of the exceptional situation that both the employees and employers are going through in the Republic of Croatia.

Therefore, AmCham believes that, besides our proposals relating to the minimal improvement of the existing Labor Act which we put forward in this position paper, it would be necessary to open a dialogue on more comprehensive changes to the labor law that would make it resistant to exceptional situations and at the same time suited to the requirements of modern times and the need for more flexible types of work.

Labor market and labor laws

Labor market

In order to successfully deal with market pressures, further modernization of the Croatian labor market is inevitable and in line with practices of comparable member states. This implies achieving further labor market flexibility through changes in labor and tax legislation.

Table 1: Comparison of the Croatian labor market with comparable markets in European Union member states

Overview of labor market statistics in the EU	*EU 28*	**Croatia**	Bulgaria	Czech Republic	Romania	Slovakia	Slovenia
Cost of labor in Q3 2019 (comparison with the same quarter in the previous year)	*+3.1*	**+5**	+10	+7.2	+13.2	+7.4	+3.3
Unemployment rate, December 2019.	*6.2*	**6.4**	3.7	2	3.9	5.7	4.6
Unemployment rate (persons aged 20-64), for 2018	*73.2*	**65.2**	72.4	79.9	69.9	72.4	75.4
Activity rate (persons aged 20-64), for 2018	*78.4*	**71**	76.3	81.7	72.8	77.4	79.5
Inactivity rate (persons aged 20-64), for 2018	*21.6*	**29**	23.7	18.3	27.2	22.6	20.5

Source: Eurostat, http://ec.europa.eu/eurostat/web/lfs/visualisations Accessed on: 21 February 2020

The current situation on the Croatian labor market is best shown by the data in Table 1 which compares markets of comparable states in the southeast of Europe with the average of EU 28.

If we compared the labor costs for the third quarter of 2019 to the same quarter in 2018, the increase in labor cost is evident. The average for the 28 member states has seen an increase of 3.1%. The states in the southeast have seen a significant change in the increase of labor costs, led by Romania, with a growth of 13.2%. Croatia has seen an increase of labor costs by 5%, which is not negligible.

When analyzing the unemployment, employment, activity and inactivity rates, Croatia has seen the worst results in all categories, if looking at the average of certain states in the Table.

In spite of the growth of the Croatian economy in the last few years, it is evident that Croatia is lagging behind when compared to comparable economies. In the

medium and long-term the modest legal changes and mild economic growth do not constitute advancements for Croatia, rather yet another serious loss in the global race for a more quality labor force and investments.

Labor Laws

AmCham considers that the Labor Act should contain growth components which would allow for the tracking of the dynamics and changes to the labor market, which necessitates making certain provisions more flexible.

The lack of clarity and unambiguous provisions, as well as the fragmented labor laws hamper experts in making simple and accurate interpretations of the rights and duties of employees and employers. What is required is to simplify the administrative handling of labor records, such as records concerning work hours, occupational safety and a range of other administrative work which drains company resources, such as time and money.

Solutions and implementations of these questions require the support of the legal system and the State Inspectorate.

Specific improvement recommendations for the Labor Act are referenced later on in this position.

System for determining salary and its definition

Base and average salary

It is AmCham's position that stimulus and bonuses should not be considered to be in the scope of the base salary, be part of the average salary nor compensation.

Currently, Article 91, paragraph 3 of the Labor Act defines the scope of the salary that is being paid to an employee for work as the base salary and all extra payments which the employer pays for employees or an employee for the work done, both directly and indirectly, in cash or in kind.

The possibility of making income more flexible should be offered based on work done. Income should be more adaptable to the real economic situation. The Labor Act does not list individually what is included, or not included, in the base salary, rather that question is regulated by collective or individual employment agreements, and if such regulations are left out, the employer regulates this question in work regulations.

Because of the extensive (maximalist) interpretation of an already widely set legal standard, stimulus (bonuses) and additional pay are regularly calculated into the average salary.

It has been shown that this practice of calculating stimulus and additional pay into the average salary has led to avoiding stimulus payments, or rather, it did not stimulate employers to do so, as it exposed them to uncontrolled expenditures for the increased average salary payments in cases where the calculations for additional employee payment were dictated by the very amount of the average salary for the period which preceded a certain event. Excessive burdening of an employer by applying current standards and their interpretation in current practice has led to a decrease in possible additional employee payments, especially evident in the area of calculating salary compensations during temporary inability to work (sick leave) (Article 95 of the Labor Act), during annual leave (Article 81 of the Labor Act), for unused annual leave (Article 82 of the Labor Act) and severance pay payment (Article 126 of the Labor Act).

AmCham considers that paying stimulus and other additional pay, whose payment is predicated on one-time reasons and variable business impact, connected with reaching specific, set, calculable goals — results (so called additional payments) that were made beforehand, should not be included in the scope of the base salary as compensation for regular performance. AmCham suggests the following changes in defining the concept and scope of a salary in Article 91.

Suggested Labor Act Changes:

Suggested change concerning the definition of an average salary from Article 91, paragraph 3 of the Labor Act:

Salary from paragraph 1 of this Article encompasses the base salary and all extra payments which the employer pays for employees or an employee, both directly and indirectly, in cash or in kind in the contractually defined work hours. When a calculation for specific work payments for an employee, as defined by this Act, is based on the amount of the average monthly employee salary in a specific timeframe which preceded a certain event, then the average salary encompasses just the basic employee salary based on the work contract and can be attributed to work in a certain month.

Calculation model for salary compensation in case of working for an employer for less than three months

When calculating salary compensation based on the amount of the average monthly salary, the basis for calculating the monthly salary for employees who did not achieve continued service in the prescribed duration will be the base salary regulated by the employer's work contract.

Explanation:

Because of imprecise legal regulations, there is room for the erroneous interpretation that an employee that was employed by an employer for less than three months (for example, one month), but that would be temporarily unable to work (because of, for example, sick leave) would have the right to compensation which would be calculated by taking into account the earnings made while working for the previous employer. This interpretation imposes upon the current employer to assume the responsibilities which come from the employee's previous employment by another employer. AmCham believes this was not the lawmaker's intention.

The current formulation of the mentioned provision leaves a legal void when calculating the salary compensation of employees which are employed by an employer in a period of less than three months. AmCham proposes changes to the current legal solution so that the current legal void be filled.

The suggested change to the calculation of salary compensation in case of work at an employer for less than three months, Article 95, paragraph 5:

If this or another law, regulation, collective agreement, work regulations or work contract does not define it differently, an employee may exercise their right to salary compensation equal to the *average base contracted salary* which was paid in the previous three months, *while in the period of the first three months of working for an employer, equal to the base contracted salary for that employer.*

Limiting the number of days for being temporarily unable to work at the expense of the employer

Article 95, paragraph 1 of the Labor Act prescribes that in the periods when an employee is not working due to valid reasons backed by law, regulation or collective agreement, the employee has the right to compensation. Furthermore, paragraph 2 of the aforementioned Article says that laws, other provisions, collective agreements or work contracts define the period for which compensations are paid at the expense of the employer. In paragraph 5 of the same article, the lawmaker defined that, if the Labor Act or another law, regulation, collective agreement, work regulations or work contract did not define it differently, an employee has the right to salary compensation in the amount of the average salary paid in the previous three months.

The current legal solution, especially in cases of continuous absence from work due to temporary inability to work (sick leave) of the employee, leads to a significant financial burden for the employer, which can result in obstructions in conducting regular business. The practice up until now of calculating stimulus and additional pay for the base salary into the average salary, which itself is the basis for estimating salary compensation, has resulted, in effect, in avoiding stimulus payments or it has not stimulated employers to do so for fear of exposing themselves to uncontrolled expenses of increased average salary payments. Changes to paragraph 5 of the aforementioned Article 95 of the Labor Act would remove the payment of stimulus and additional pay from the calculations of the average salary which do not represent compensation for regular work of the employee, but rather are motivated by one-time reasons and current (non regular) business impact.

It is evident from a comparative analysis of other European states, that the predominant trend is an increase in the period of compensation payments for the period the employee is temporarily unable to work at the expense of the employer. For example, the number of days for which compensation payments are made at the expense of the employer in Lithuania is 2 days, in Bulgaria is 3 days, in Estonia is 4 days, in Romania is 3 to 5 days, in the Czech Republic and Sweden is 14 days, in Hungary is 15 days, while in Slovenia it is 30 days. Furthermore, compensation for the period of temporary inability to work for the employee at the expense of the employer cannot be longer than 15 days in Hungary, 40 days in Bulgaria, 120 days in Slovenia, 183 days in Romania and 182 days in Estonia within a year[2]. Because of this, AmCham proposes the following changes:

Suggested Labor Act Changes:

Article 95, paragraph 2 of the Labor Act:

[2] Law firm Krehić i partneri d.o.o. in association with Deloitte Legal s.r.o. (data collected on 29 January 2020)

the Act, other regulations, collective agreements and work contracts define the period in which the compensation for an employee's temporary inability to work is paid out at the expense of the employer, which can at most be 15 days, and in one calendar year the sum total which is to be paid for compensation during an employee's temporary inability to work at the expense of the employer cannot exceed 45 days.

Suggested Compulsory Health Insurance Act Changes:

Article 40 of the Compulsory Health Insurance Act:

Salary compensation with regard to using healthcare from Article 39, points 1 and 2 of this Act is paid to the insured person from their own funds:

1. legal or natural person — employer for the first 15 days of temporary inability to work, during one calendar year the total period for which compensation is paid during the employee's temporary inability to work at the expense of the employer cannot be longer than 45 days, as well as when the insured person is working in a third country where he was directed to by a legal or natural person or is themselves employed in a third country.

2. legal person for professional rehabilitation and employing persons with disabilities, or a legal or natural person — employer for the insured employee — disabled person for the first seven days of being temporarily unable to work.

The impact of temporary inability to work on the notice period

Temporary inability to work is often misused in cases where employees who are to be fired or have had their employment terminated with the aim of prolonging the duration of the notice period and of procuring income from employment for longer than the notice period, which puts employers at a disadvantage because they cannot predict nor control their expenses related to termination nor the moment of termination of the employee.
AmCham considers that the influence of temporary inability to work should be limited to the duration of the notice period so as to stop and/or greatly reduce misuse and to protect employers.

Article 121, paragraph 1 of the Labor Act stipulates that the notice period begins the day of delivery of the termination of the employment contract.
Article 121, paragraph 3 of the Labor Act prescribes that the notice period does not last during the temporary inability to work.

Provision of Article 121, paragraph 4 of the Labor Act prescribes that in case of an interruption of the notice period due to the employee's temporary inability to work, the employment of that employee will end no later than six months since handing in the termination of the employment contract.

The aforementioned provisions of Article 121, paragraphs 3 and 4 of the Labor Act are imprecise because the way that the provision of paragraph 4 is formulated, citing the Article in a grammatical interpretation would mean that the same relates to just when the notice period is interrupted, which means that the period started and that the employee was already handed the termination notice or it was delivered and would, based on this interpretation, not relate to cases when there is no interruption of the notice period because the employee was temporarily unable to work before the day they were handed a termination notice.

Since we consider this interpretation to be extremely limiting to the employer, based on all the reasons noted at the outset, we propose the following changes to paragraphs 3 and 4 of the aforementioned article:

Suggested Labor Act Changes:

Article 121, paragraph 3

The notice period does not apply during temporary inability to work, but the employment of an employee who is temporarily unable to work before or during the notice period, regardless of the duration of the temporary inability to work and the employee's corresponding notice period, will end no later than after six months are up since the day they were handed their termination notice.

Article 121, paragraph 4 would be deleted.

The aforementioned suggestion was already part of the draft of the Labor Act of 2014 and the opinions expressed in the comment of the current Labor Act support this interpretation.

Furthermore, the provision of Article 121, paragraph 5 of the Labor Act specifically prescribes that the notice period lasts during annual leave, paid leave in the period of the employee's temporary inability to work whom the employer released from their obligation to work, unless the collective agreement, work regulations or employment contract do not specify otherwise.

It is important to further define through the Labor Act that the mentioned provision of Article 121, paragraph 5 of the Labor Act is applied in cases where an employee is temporarily unable to work before the decision to terminate by which the employer has freed them of their work obligation.

Namely, it is doubtful in practice whether the existing cited provision of Article 121, paragraph 5 of the Labor Act refers only to cases of an employee becoming temporarily unable to work after being handed their termination notice which frees them from their obligation to work in their notice period or the same refers to cases of an employee's temporary inability to work prior to being handed their termination notice.

Considering that case-law[3] holds the position that, in the case where the employer has freed the employee from their obligation to work in their notice period, the employee does not have an obligation to work, consequently in that case the employee cannot be temporarily unable to work (since they do not work in that period), as the temporary inability to work should have no effect on the course of the notice period in cases where the employer has freed the employee from their obligation to work during the notice period.

Because of what was previously mentioned, and since the obligation to work indisputably does not exist in cases when the employer freed the employee in their termination decision from working in the course of the notice period, irregardless of whether the employee became temporarily unable to work, in both cases, the employee's temporary inability to work should not influence the course of the notice period as there is no obligation for the employee to work.

The opinions laid out in the comments of the current Labor Act support this interpretation in both cases.

Thus, AmCham proposes the following changes to the disputed article:

Suggested Labor Act Changes:

Article 121, paragraph 5 of the Labor Act:

The notice period applies during annual leave, paid leave and the period of the employee's temporary inability to work whom the employer released from their obligation to work, irregardless of whether the employee used this right before or after the termination decision, unless the collective agreement, work regulations or employment contract do not specify otherwise.

Expanded reason for regular termination

AmCham considers that a more flexible possibility for regular termination of an employment contract is required.

AmCham specifically proposes that the unsatisfactory quality of the employee's work obligations is established as a valid reason for termination, without the need for a special regulation to be made by an internal act of the employer for such a possibility. The aforementioned implementation can be conducted by prescribing the previously mentioned reason as a fundamental part of termination for wrongful conduct.

Thus, AmCham proposes the following changes to Article 115, paragraph 1, point 3:

[3] Decision of the Supreme Court of the Republic of Croatia, Revr-G15/08-2 of 18 February 2009, High Administrative Court of the Republic of Croatia, US-5428/2005 of 28 August 2008 and others.

Suggested Labor Act Changes:

Article 115, paragraph 1, point 3 of the Labor Act:

3) if the employee breaks *or wrongfully conducts* his work obligations (termination conditioned upon the employee's wrongful conduct) or

Working time

Flexible working time and the possibility of setting up a flexible work time schedule

Due to not only the economic situation, but also the dynamic nature of the process of business, it is necessary to predict the possibility of flexible work time for some industries, as well as the possibility of setting up a flexible work time schedule so that organizing work time may be made to more successfully keep up with different work needs and the demands of organizing business processes, all in accordance with EU Directive 2003/88 concerning certain aspects of the organization of working time. Additionally, a deviation from full-time and part-time employment of an individual employee within one week, above 40 to a maximum of 50 hours, due to flexible work time organization on an individual basis should not be considered overtime (variable weekly work time) so that the average work hours for the need of ascertaining overtime are determined on a monthly/half-yearly/yearly basis. Changes in this area would also necessitate a significant simplification of regulations which relate to the recording of an employee's work time.

Suggested Labor Act Changes:

Article 61, paragraph 4 of the Labor Act:

As an exception to Article 1, an employee who works full-time may work variable weekly work hours up to fifty hours a week, so that on a yearly basis their average number of work hours totals 160 hours a month. The number of hours an employee works in the case of a variable weekly working time which exceeds forty hours a week, will not be considered overtime.

Reallocation of working time

AmCham members have on more than one occasion pointed out that the question of overtime is one of the greatest problems they face. AmCham believes that a step further could be made in this area in accordance with the possibilities presented in EU Directive 2003/88 on certain aspects of organizing working time. Namely, the Directive prescribes that an average weekly (7 day) working time cannot exceed 48 hours, but it does offer the possibility of adding a so called "opt-out" clause into national legislation when this type of limitation on the working time is not applied with the consent of the employee.

AmCham proposes the following:

Introducing an "opt-out" clause (which in a wider or narrower sense has already been applied in several EU states) to the Labor Act so that it can adequately answer the challenge of business fluctuations and thus maintain jobs through a mechanism that opens up the way for cooperation and co-decision making between the employer and employee when it comes to organizing working time and the business process. This is especially important for small and medium-sized business owners and their employees. What also needs to be taken into account is that the Act should not prescribe overly complicated or bureaucratized procedures for applying this clause, but rather to simplify its use in practice. In this case, the benefits would be mutual: employers would benefit by achieving better business results when such a way of organizing working time is justified because of market conditions, while employees would benefit from the flexible organization and free handling of their own working time.

AmCham also proposes that the government considers the possibility of legalizing alternative compensation for overtime in the form of achieving the right to time off instead of monetary compensation for overtime, which has been found to be a fairly widespread practice by some employers, although there was no legal basis for it until now, the Labor Act should consider the possibility of exchanging monetary compensation for a vacation day without necessary written consent of the employee.

We propose that Article 65 of the Labor Act which regulates overtime be amended with a new provision which allows for the application of the "opt-out" clause.

Suggested Labor Act Changes:

Article 65 of the Labor Act:

As an exception, with the employee's explicit consent, a deviation from the prescribed law is allowed for the maximum number of overtime hours on a yearly basis from paragraph 4 of this article, in such a way that the number of overtime hours of the legal maximum does not exceed more than 230 hours a year in any event. In any case, the employer must receive prior written consent from the employee for overtime hours which exceed the legally prescribed maximum of 180 hours a year.

In case the employee refuses to give consent for overtime which exceeds the legally prescribed maximum from paragraph 2 of this article, they cannot under any circumstances be exposed to negative consequences for withholding consent.

Consent to overtime which exceeds the legally prescribed maximum is valid for 6 months.

The employer is obligated to keep track of all employees who gave their consent to overtime which exceeds the legally prescribed maximum and to also keep track of the number of overtime hours worked over the legally prescribed maximum of 180 hours a year.

AmCham proposes introducing paragraph 2 into Article 94.

In case of overtime, work regulations may prescribe that the employer and employee may agree that instead of receiving an increase in salary for overtime, the employee can be given paid time off proportionately to the number of worked overtime hours, or that part of the worked overtime hours be paid with an increase in salary, and the remainder be paid with time off.

Labor Act on remote locations — work from home

One of the elements of a flexible approach to resource management is the organization of work from a remote location or from home. Although the current Article 17 of the Labor Act predicts the possibility of working from home, the current demands with regards to the necessary content of the written employment agreement for remote work make conditions that have to be met more difficult and more costly for both the employer and the employee. This especially relates to fulfilling the demands of occupational safety and the tracking of working time of an employee working from home.

As this form of work is happily accepted by employers and employees, **AmCham stands for the following:**

- Simplify regulations on working hour records for work from home so that employers are allowed to determine by internal rules how to record working hours (work performance versus formal attendance)

- Align legal terminology with current regulations in the area of occupational safety.

- Allow the introduction of a paragraph on the tax-free fixed compensation of expenses which occur when an employee uses their own equipment (as defined by the Labor Act) and other expenses the employee might experience while performing work (when it is not as simple to determine that the expenditure is only work related, for example, internet expenses, company phone and others - for example, electricity, water, central heating expenses) in tax legislation. In Slovenia, the prescribed monthly tax-free work from home compensation totals 5% of the salary, but not more than 5% of the Slovenian average salary (which is currently more than 90 euros a month). To make the work from home compensation tax-free, it is necessary to define it through internal work regulations and employment contract, the equipment bought for work from home must be necessary and common for specific work and compensation for work from home should be backed by real expenses.

The aforementioned approach would also be in line with the demands of EU Directive 2019/1158 on work-life balance, which the Republic of Croatia needs to implement by 2 August 2022, which prescribes that the employee has the right

to ask for flexible working conditions for the purposes of adjusting his work schedule (which, among others, includes work from home).

Occasional work from home on the explicit request of the employee

AmCham proposes a separate category to regulate occasional remote work on the explicit request of the employee. It would be beneficial for numerous employees who conduct intellectual and administrative work and that exclusively use personal computers in their work to occasionally work from home as they would avoid wasting time by commuting to their workplace and would be closer to their families. This would also allow employers to make employees happier and more productive by satisfying their requests to occasional work from home.

By doing this type of work, employees should not bear any unacceptable risks as the employee would, by staying at home, accept only those risks that he usually accepts as he is exposed to them on a daily basis outside of work hours by spending time in their home environment and they would also additionally avoid the risks of commuting to their workplace and the return trip, avoiding the biggest risk involved with so called office work.

The employee would retain the possibility to do their work in their regular workplace. The employee would not renounce the right beforehand to their regular workplace which meets all the standards prescribed by law, but would use the possibility if they choose to, while also accepting the added costs of such work (for example, electricity, heating).

Since working long hours on computers (and not just, for example, machinery) can negatively impact the health of an employee, and that implementing work safety measures in spaces where the employees live would be very complicated and would lead to employers not using the possibility to allow employees occasional work from home at all. AmCham proposes that this type of negative influence be excluded in such a manner that the possibility of this type of work have a set time limit (for example, no more than four days in the span of a month). This would also protect employees from possible undue pressure from the employer aimed at making employees use this possibility as much as possible, so that the employer might cut work related costs.

Therefore, a separate employment contract with special contents should not be concluded for occasional remote work on the explicit request of the employee. An employee's expression of intent to accept this type of occasional work under law under certain conditions would be given by making a request, and an employer's expression of intent would be to accept such a request. To protect the interests of the employee the employer would be obligated to keep record of such requests.

Following all of the above, AmCham propose regulations that would be made into a separate article of the Labor Act, and would go as follows:

Occasional work from home on the explicit request of the employee

(1) The employer can allow an employee, upon his explicit written request, to work remotely from home or another location at the employees discretion, with the provision that the employee can work from home for no more than four days in the span of a month upon such request.

(2) The employee is obligated to make a separate request for each day that they would work from home. The employer is obligated to keep all submitted requests, as well as the answers he gave to the employee for each request.

(3) By submitting a request to work from home, in accordance with this Article, the employee accepts the possible costs that this type of work might incur.

(4) In the case of occasional work from home according to the provisions of this article, the employer is not obligated to uphold regulations which regulate occupational safety in this type of work.

(5) Occasional work from home according to the provisions of this article will not be considered remote work.

(6) Although the employee is allowed to work from home as described in paragraph one of this article, the employee is not obligated to conduct the work from home and can conduct work at their regular workplace.

By introducing occasional work from home at the explicit request of the employee as suggested, without the need for implementing regulations and dealing with questions and difficulties which usually appear when conducting remote work, employees and employers would be allowed to use all the benefits that this type of work offers, with the greatest advantage we perceive being simple and quick applicability of the proposed institution.

Posting employees abroad

Considering the freedom of movement on the European Union's labor market, situations where employees are sent abroad to perform certain work related tasks is increasing, working at an affiliate company, as well as other companies to perform specific work. AmCham considers the current regulation to be unclear and incomplete. It is not clear who the person burdened by the right to conclude an employment contract is, considering the contradictions which occur in Article 18 of the Labor Act, which prescribes the obligatory content of the employment contract which was concluded with the employee before posting them abroad and Article 129 of the Labor Act clearly leaves the possibility open that the employee can conclude an employment contract with the affiliate companies abroad, but with certain obligations from the Croatian company in case of

termination of employment. Due to an increase in use of the institution concerned, it is necessary to regulate the obligations which come from this for the employer as precisely as possible, for the sake of transparency. Additionally, while regulating the institution concerned, the employer's increased flexibility while using the institution of labor legislation should also be taken into account.

Furthermore, AmCham considers that through the use of the institution concerned, it would be appropriate to allow the introduction of the institution of "regional" or "global" roles/positions, considering the frequent use of the institution concerned.

In light of the aforementioned, AmCham suggests changes to Article 18.

Article 18
(1) If an employee is temporarily being posted abroad in a continuous period of thirty days, a written employment contract or a written confirmation on the concluded employment contract before going abroad, other than data mentioned in Article 15 of this Act, must contain the following information:

1) duration of work abroad

2) work schedule

3) the employee has the right not to work on non-working days and holidays with compensation

4) the monetary unit in which salary payments will be made

5) other income in salary or in kind which the employee will have a right to during his work abroad

6) conditions governing the return to the country.

(2) Instead of the data in paragraph 1, points 2, 3, 4 and 5 of this Article, the employment contract, or confirmation of a concluded employment contract, can point to the suitable law, regulation, collective agreement or work regulations which regulate those questions.

(3) The employer should hand a copy of the application to the compulsory health care insurance fund for the duration of the work abroad to the employee before he goes abroad, if the employer is obligated to ensure them according to special regulations.

(4) If the employer is posting their employee into an affiliated company, in accordance with special regulations on companies which were founded abroad, the employer can, with the written consent of the employee, post them temporarily at that company based on the agreement concluded between the affiliated employers for the duration of no more than two years. The agreement and written consent from this paragraph must contain the data from Article 10, paragraphs 4 and 5 of this Act.

(5) The provisions of Article 6 of this Temporary Employment Act are not applied to the posting of employees from paragraph 4 of this Article.

Furthermore, AmCham proposes deleting Article 129 of the Labor Act, considering that it is an unclear and incomplete article. Namely, in the case of posting an employee (as indicated in the title of this article), no new employment contract between the employee and the foreign employer is concluded. For this reason, Article 129 is inaccurate and superfluous, which states that the Croatian employer is obligated to compensate the employee for moving costs, to ensure adequate employment in Croatia and that the employment by the foreign employer counts towards the duration of the employment by the Croatian employer.

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