

**April 2015**

**In focus: Law on Amendments and Supplements to the Law on Employment and Unemployment Insurance**

On April 29<sup>th</sup> 2015, the National Assembly of the Republic of Serbia adopted the Law on Amendments and Supplements to the Law on Employment and Unemployment Insurance, which has been published in the Official Gazette of the Republic of Serbia no. 38/2015 and entered into force on May 7<sup>th</sup> 2015 (hereinafter referred to as: the "**Amendments to the Law**").

Besides novelties regarding the organizational structure of the National Employment Service, improvement of the process of creating measures and programs for an active employment policy, specifying the obligations and responsibilities of agencies who mediate in employment abroad, harmonization with the provisions of the Law on Central Registry of Compulsory Social Security and the Law on Employment of Foreigners, the most significant novelties adopted by the Amendments to the Law are those concerning financial compensation which unemployed persons exercise with the National Employment Service.

The Amendments to the Law firstly specifies provisions concerning the basis for calculation of the amount of financial

compensation in the event of unemployment (hereinafter referred to as: the „financial compensation“). Since the former legal wording left room for different interpretations of what is meant by the salary of an unemployed person, now it is expressly provided that the basis for calculation of the amount of financial compensation shall be the average salary or compensation of salary that has been paid to the unemployed person.

Also, changes were made in respect of the reference period for calculation of the basis for determining the amount of financial compensation, so that it is now stipulated that the basis calculation of the amount of financial compensation represents the average salary or compensation of salary paid to the unemployed person in the last 12 months prior to the month in which his/her insurance was terminated, instead of the previous solution according to which the basis calculation of the compensation was the average salary or compensation of salary in the last 6 months.

As a rule, the paid salary should correspond to the salary that an unemployed person achieved on the basis of criteria determined by the employment agreement, which also represents the basis for calculation and payment of the accompanying social security contributions. However, since it

often the case that the salary of an unemployed person has been paid in the amount lower than the basis on which the contribution is calculated or that the same has not been paid at all, the Amendments to the Law specifies the method of calculating the basis for determining the amount of the financial compensation in such situations. Namely, in case that the salary has been paid to an unemployed person in an amount lower than the basis on which the contribution is calculated, the basis for determining the amount of financial compensation is the basis on which the contribution for mandatory unemployment insurance is calculated and for which the individual tax return has been submitted to the competent authority. In the event that the salary has not been paid to the unemployed person, contribution for mandatory unemployment insurance has not been calculated and the individual tax return has not been submitted to the competent authority in accordance with the law, the amount of financial compensation shall be determined in the lowest amount, i.e. in the amount of 80% of the minimum salary determined for the month in which the financial compensation is paid.

The Amendments to the Law also specifies the manner of calculation of the financial compensation. Namely, the Law stipulates that the financial compensation shall be paid for the month preceding the month in which the payment is made, however the same may not be higher than 160% or lower than 80% of the minimum salary determined pursuant to labor regulations for the month in which the financial compensation is paid. Such wording enabled different interpretations. Former practice of the National Employment

Service has been such that in calculating the financial compensation, the average number of working hours for each month had been used. Amendments to the Law specifies that the financial compensation shall be determined based on the number of working hours for the month for which payment of the financial compensation is made.

In order to reduce misapplication during realization of the right to financial compensation, the Amendments to the Law envisages that an unemployed person, whose employment or insurance was terminated on the grounds on which he/she was not entitled to financial compensation, may be entitled to financial compensation only if after re-entering into employment relations, he/she was insured for at least 12 months continuously or intermittently within the past 18 months and the employment is terminated on the grounds that according to the Law gives him/her the right to exercise the financial compensation.

Finally, the Amendments to the Law introduces the obligation of an unemployed person to refund the National Employment Service amounts received on behalf of financial contribution to which he/she was not entitled. In this sense, it is provided that the final and binding decision of the National Employment Service according to which an unemployed person is obliged to return the received amounts, has enforcement power in accordance with the law governing the procedure of enforcement and security, so that there is no need for litigation. Also, it is envisaged that the National Employment Service also has the right to a refund of calculated and

paid contributions for pension, disability and health insurance from the competent services of social insurance.

The Amendments to the Law stipulates the obligation of the National Employment Service to harmonize its manner of work and general acts with the provisions of the Amendments to the Law within three months from the date of its entry into force.

Individuals who, by the day of entry into force of this Amendments to the Law, attained rights pursuant to regulations and general acts which were in force prior to entry into force of the same, shall exercise their rights to the extent and in the manner stipulated by such regulations and general acts. Likewise, the procedures commenced prior to entry into force of these Amendments to the Law shall be completed pursuant to the provisions of the Law on Employment and Unemployment Insurance that were in force before the Amendments to the Law.

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