CVETKOVIĆ, SKOKO & JOVIČIĆ
JOINT LAW OFFICE

Knez Mihailova Street 7/IV • 11000 Belgrade • Serbia • Phone/fax (+381) 11 3281-949 • 3281-890 • 3283-764 • www.cplaw.rs • e-mail: office@cplaw.rs

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In focus: Staff Leasing Law

1 March 2020 marks the beginning of application of the Staff Leasing Law (hereinafter: the "**Law**") which was adopted by the National Assembly of the Republic of Serbia on 6 December 2019.

The Law has finally brought about the regulation of so-called "employment through lease" (lease of employees), an area which, until recently, firmly belonged to the "grey zone". Although this form of employment existed in practice, it was formally classified under another form of work, i.e. engagement.

The Law regulates the work conditions of temporary employment agencies (hereinafter: the "**Agency**"), the rights and obligations of employees concluding an employment agreement with the Agency for being assigned to an employer-beneficiary, the manner and conditions of leasing employees, the relationship between the Agency and the employer-beneficiary, the obligations of the Agency and employer-beneficiary towards assigned employees and penalty provisions, i.e. fines for breaches by the Agency and employer-beneficiary in case of their non-compliance with the provisions of the Law are also stipulated. The goal of this Law is to establish the equal treatment of assigned and comparable employees with respect to the exercising of rights stemming from the employment relation and based on employment, which hasn't been the case so far.

The most significant solutions envisaged by the Law are outlined below.

Temporary Employment Agency

In addition to meeting the statutory requirements regarding the level of education and spatial and technical conditions, a company or entrepreneur who intends to operate as a Temporary Employment Agency is obliged to obtain an appropriate work permit which the Ministry in charge of labor issues for a period of 5 years, and to file an application for registration of activity (activity of temporary employment agencies or other assignment of human resources) with the Business Registers Agency.

Establishing an employment relationship and assignment of an employee

It is important to emphasize that the employment agreement for either a definite or indefinite period is concluded between the Agency and employee, while the employer-beneficiary and Agency conclude the agreement on assignment of the employee.

If the person is employed by the Agency for an indefinite period, his/her assignment to the employer-beneficiary is made on the basis of a work order which essentially replaces the annex to the employment agreement.

On the other hand, if a person concluded an employment agreement for a definite period of time with the Agency, the duration of such an agreement is equal to the time of assignment to the employer-beneficiary. Additionally, in this situation, assignment is done in cases (or on grounds) and for the duration determined for an employment relationship with definite period of time as required by the provisions of the Labor Law.

Restrictions prescribed by the Law

The Law prescribes restrictions based on the number of employees which the employer-beneficiary can hire, as well as limitations in terms of the duration of assignment.

Accordingly, the employer-beneficiary can hire up to:

1) one assigned employee if he has 2 to 9 employees;
2) two assigned employees if he has 10 to 19 employees;
3) three assigned employees if he has 20 to 29 employees;
4) four assigned employees if he has 30 to 39 employees;
5) five assigned employees if he has 40 to 49 employees;
6) in case the employer-beneficiary has 50 or more employees, the total number of assigned employees cannot be more than 10% of the total number of employees on the date of concluding the agreement on assignment of employees.

It is important to emphasize that the above restrictions do not apply to assigned employees who have an employment agreement for indefinite period of time with the Agency, regardless of the period they are assigned to the employer-beneficiary.

The second limitation concerns the duration of assignment when the assigned employee concludes an employment agreement for definite period of time. Namely, an employee who previously worked for the same employer-beneficiary for an definite period of time, whether directly or through the same or another Agency for a total duration of more than 24 months, may not be referred to the same employer-beneficiary, except when work for an employer-beneficiary for an definite period of time is allowed for a longer period in accordance with the provisions of the Labor Law.

Also, the same assumption applies to assigned employees regarding the concluding an employment agreement for indefinite period of time which is stipulated by the provisions of the Labor Law, thus in case an assigned employee remains working for the employer-beneficiary for at least 5 (five) working days after expiry of the period for which he is assigned, it shall be considered that he/she has established an employment relation for indefinite period of time with the employer-beneficiary.

Assumption of assignment

According to the Law, a person who works for the employers-beneficiary, i.e. in the premises of the employer-beneficiary, but has an employment agreement or other work engagement agreement with another employer, shall be considered an assigned employee of that other employer, unless proven otherwise.

This provision is intended to cover cases in which legal entities which are not licensed agencies "outsource" employees, in which case liability is borne by both participants - i.e. the employer-beneficiary and the employer "outsourcing" employees.

Equal working conditions for an assigned employee and comparable employees

The assigned employee is entitled to equal working conditions as a comparable employee of the employer-beneficiary which, among other, implies equal conditions in terms of working hours, rest during work, annual leave, elements for calculation and payment of salary, paid leave, safety and health at work, non-discrimination, etc.

The Law defines a comparative employee as an employee who is employed by the employer-beneficiary and who performs or would perform the same jobs with respect to the required degree and type of qualification, i.e. level of qualification and special knowledge and abilities, or competences, complexity, responsibility, work experience and other special working conditions.

However, if the employer-beneficiary does not employ a comparable employee on the same jobs, the Law does not give the most accurate solution, since in this case it is stipulated that the basic salary determined for the assigned employee cannot be lower than of an employee of the employer-beneficiary with the same level of education or qualifications, without defining further criteria. This brings into question the manner of determining the basic salary of the assigned employee in a situation where that person has the same level of education as an employee of the employer-beneficiary, but they work on completely different jobs.

It is also important to note that the employer-beneficiary is jointly and severally liable for the Agency's obligations to pay salaries, compensation of salaries and expenses.

Finally, regarding the termination of an employment agreement, the Agency may terminate an employee's employment agreement for reasons incurred at the employer-beneficiary and for reasons stipulated by the Labor Law, whereby the employer-beneficiary is obliged to notify the Agency in writing and without delay on the reasons for termination, and to provide all evidence necessary to establish the circumstances which are grounds for termination of the employment agreement.