

LEGAL HIGHLIGHTS



**PRAVA I OBAVEZE POSLODAVACA I ZAPOSLENIH
ZA VREME TRAJANJA VANREDNOG STANJA**

**RIGHTS AND OBLIGATIONS OF EMPLOYERS AND
EMPLOYEES DURING THE STATE OF EMERGENCY**

PRAVA I OBAVEZE POSLODAVACA I ZAPOSLENIH ZA VREME TRAJANJA VANREDNOG STANJA

I Uvod

Skupština Republike Srbije je dana 16. marta 2020. godine zbog pandemije virusa COVID-19 proglasila u Republici Srbiji vanredno stanje. Odluka o proglašenju vanrednog stanja je objavljena u "Službenom glasniku RS" br. 29/2020 i stupila je na snagu danom objave.

Nakon donošenja navedene Odluke, usledilo je donošenje niza odluka, mera i uputstava za postupanje, kojima su regulisane različite oblasti života i rada građana Republike Srbije, pa između ostalog i donošenje akata i uputstava koji se odnose na organizovanje rada za vreme vanrednog stanja, kao i prava i obaveze poslodavaca i zaposlenih za vreme trajanja vanrednog stanja.

II Organizovanje rada za vreme trajanja vanrednog stanja

Uredbom o organizovanju rada poslodavaca za vreme trajanja vanrednog stanja („Službeni glasnik RS“ br. 31/2020) date su načelne smernice poslodavcima za postupanje u pogledu organizacije procesa rada u okolnostima trajanja vanrednog stanja.

a) Rad van prostorija poslodavca

Za vreme vanrednog stanja poslodavac je dužan da zaposlenima omogući obavljanje poslova van prostorija poslodavca (rad na daljinu i rad od kuće) na svim radnim mestima na kojima je moguće organizovati takav rad, u skladu sa opštim aktom i ugovorom o radu.

U slučaju da opštim, odnosno pojedinačnim aktom poslodavac nije definisao ovakav način rada, dužan je da zaposlenom izda Rešenje koje obavezno sadrži:

RIGHTS AND OBLIGATIONS OF EMPLOYERS AND EMPLOYEES DURING THE STATE OF EMERGENCY

I Introduction

On 16 March, the Parliament of the Republic of Serbia declared a state of emergency in the Republic of Serbia due to the pandemic of the COVID-19 virus. The Decision to declare the state of emergency was published in the Official Gazette of RS no. 29/2020 and entered into force on the day of its publication.

Following the adoption of the above mentioned Decision, a series of decisions, measures and instructions passed, regulating different areas of life and work of the citizens of the Republic of Serbia, including the adoption of acts and instructions relating to the organization of work during the state of emergency, as well as rights and obligations of employers and employees during the state of emergency.

II Organizing work during the state of emergency

The Decree on Organizing the Activity of Employers During the State of Emergency (Official Gazette of RS No. 31/2020) provides principled guidelines for employers to act in relation to the organization of work processes in the circumstances of the state of emergency.

a) Work outside the premises of the employer

During the state of emergency, the employer is obliged to enable employees to perform work outside the premises of the employer (teleworking and work from home), at all workplaces where such work can be organized in accordance with the general enactment and employment contract.

If the general enactment and the individual enactment do not provide for this manner of work, the employer must issue that must contain:

- trajanje radnog vremena,
- način vršenja nadzora nad radom zaposlenog.

Takođe, poslodavac je dužan da vodi evidenciju o radu zaposlenih koji rad obavljaju van prostorija poslodavca.

b) Rad u prostorijama poslodavca

Poslodavac koji zbog procesa rada nije u mogućnosti da rad zaposlenih organizuje van svojih prostorija dužan je da rad uskladi na sledeći način:

- organizuje rad u smenama, kako bi što manji broj zaposlenih rad obavljao istovremeno u istoj prostoriji,
- omogući održavanje svih sastanaka elektronskim putem,
- odloži sva službena putovanja u zemlji i inostranstvu u skladu sa odlukom nadležnog organa o privremenom ograničenju ulaska u Republiku Srbiju i kretanja.

c) Osiguranje i zaštita zdravlja zaposlenih

Poslodavac je dužan da u cilju osiguranja zaštite i zdravlja zaposlenih obezbedi sve opšte, posebne i vanredne mere koje se odnose na higijensku sigurnost objekata i lica u skladu sa Zakonom o zaštiti stanovništva od zaraznih bolesti („Službeni glasnik RS“ br. 15/2016).

Poslodavac je dužan da zaposlenima koji su u neposrednom kontaktu sa strankama, odnosno dele radni prostor sa više lica obezbedi dovoljne količine zaštitne opreme (maske, rukavice).

d) Zaposleni roditelj sa decom mlađom od 12 godina

Ministarstvo državne uprave i lokalne samouprave donelo je Preporuku za organizovanje rada u javnim upravama i

- the duration of working hours,
- the manner of supervision of the employee's work.

Furthermore, the employer is obliged to keep records of employees who work outside the business premises of the employer.

b) Work inside the premises of the employer

For an employer whose nature of activity is such that it is not possible to organize work outside of its premises, it is necessary to adjust its operations in the following manner:

- to arrange shift work, so that as few employees work simultaneously in one room as possible,
- enable all business meetings to be held electronically,
- postpone business trips in Serbia and abroad, in accordance with the authority's ban/temporary restriction of entry and movement in the Republic of Serbia.

c) Protection and health of employees

In order to ensure the protection and health of employees, the employer is obliged to provide all general, special and extraordinary measures related to the hygienic safety of facilities and persons in accordance with the Law on Protection of the Population against Communicable Diseases („Službeni glasnik RS“ br. 15/2016).

The employer is obliged to provide the employees who are in direct contact with clients, i.e., share the work space with more than one person sufficient quantities of protective equipment (masks, gloves).

d) Employed parent with children under 12 years of age

The Ministry of State Administration and Local Self-Government adopted a Recommendation for organizing work in public administrations

državnim institucijama, koja se pre svega odnosi na zaposlene u državnim organima, javnim službama i jedinicama lokalne samouprave. Međutim, ovu preporuku treba primeniti i na poslodavce u privatnom sektoru, ukoliko to dozvoljava delatnost rada poslodavca.

Prema preporuci, posebno ugrožena lica su lica sa utvrđenim hroničnim oboljenjima i lica starija od 60 godina, a posebnu zaštitu ima roditelj deteta do 12 godina, **naročito ukoliko sam vrši roditeljska prava ili je drugom roditelju ustanovljena radna obaveza**. Za navedene zaposlene neophodno je omogućiti rad od kuće u skladu sa planom rada i rasporedom poslodavca.

Ukoliko se zbog delatnosti i prirode posla poslodavca ne može organizovati rad od kuće, poslodavac je dužan da obezbedi mere zaštite i zdravlja zaposlenih, kao i da organizuje rad u smenama, kako bi što manji broj zaposlenih i drugih radno angažovanih lica rad obavljalo istovremeno u jednoj prostoriji.

Roditelju sa detetom ispod 12 godina, poslodavac treba da omogući rad od kuće, a ukoliko je proces rada takav da je nemoguće organizovati takav rad, neophodno je da se organizuje rad u smenama, tako da se raspored rada zaposlenog roditelja ne poklapa sa rasporedom rada drugog roditelja koji takođe ima radnu obavezu.

III Pojedina prava i obaveze poslodavca i zaposlenih

a) Rad od kuće zaposlenog

Poslodavac je dužan da zaposlenom koji rad obavlja od kuće obezbedi sve potrebne uslove za nesmetan rad od kuće koji su definisani članom 42. Zakona o radu.

and state institutions, which primarily refers to employees of state bodies, public services and local self-government units. However, this recommendation should also be applied to employers in the private sector, if permitted by the activity of the employer.

According to the recommendation, especially vulnerable persons are persons with established chronic diseases and persons older than 60 years, and special protection is given to the parent of a child up to 12 years, **especially if he/she exercises parental rights himself or if another parent is established with a work obligation**. For these employees, it is necessary to enable work from home in accordance with the work plan and schedule of the employer.

If due to the activity and nature of the work of the employer, it is not possible to organize work from home, the employer is obliged to provide measures of protection and health of employees, as well as to organize work in shifts, so that as few employees and other engaged persons as possible work simultaneously in one the room.

A parent with a child under the age of 12 should be allowed to work from home by the employer, and if the work process is such that it is impossible to organize such work, it is necessary to arrange shift work so that the working parent's work schedule does not overlap with the work schedule of the other parent who also has a work obligation.

III Certain rights and obligations of employers and employees

a) Work from the home of an employee

The employer is obliged to provide to the employee performing work from home all the necessary conditions for smooth work from home as defined in Article 42 of the Labor Law.

Ovde se prevashodno misli na potrebna sredstva za rad, koja je poslodavac saglasno navedenoj odredbi Zakona o radu dužan da obezbedi, instalira i održava.

Za vreme obavljanja rada od kuće zaposleni ostvaruje pravo na zaradu u istom iznosu kao zaposleni koji poslove obavljaju u prostorijama poslodavca, ali ne ostvaruje pravo na naknadu troškova prevoza za odlazak i dolazak sa rada, kao ni na naknadu drugih troškova u vezi sa organizacijom rada na ovakav način.

b) Zaposleni u karantinu ili u samoizolaciji

Zaposleni kojima je nadležni organ izdao akt o samoizolaciji ili karantinu ostvaruje pravo na naknadu zarade.

Naknada zarade za zaposlene u samoizolaciji ili karantinu se utvrđuje u skladu sa odredbama Zakona o zdravstvenom osiguranju („Službeni glasnik RS“ br. 25/2019).

Na teret poslodavca pada naknada zarade za prvih 30 dana odsustva, a po isteku 30-og dana naknadu zarade izmiruje Republički fond za zdravstveno osiguranje.

Zaposleni koji su u samoizolaciji ili karantinu poslodavca moraju da obaveste o tome telefonom ili dostavljanjem obaveštenja elektronskim putem, uz obavezu dostavljanja skeniranog akta nadležnog organa u prilogu elektronskog obaveštenja.

Potvrdu o privremenoj sprečenosti za rad, kao i doznaku za zaposlenog može u originalu da dostavi zaposleni ili član njegove porodice kada prestanu razlozi zbog kojih nije mogao da navedena zdravstvena dokumenta dostavi.

This primarily refers to the necessary means of labor, which the employer is obliged to provide, install and maintain in accordance with the above mentioned provision of the Labor Law.

While performing work from home, an employee is entitled to a salary equal to the amount of employees performing work on the premises of the employer, but does not exercise the right to reimbursement for transportation expenses for departure and arrival from/to work, as well as to reimbursement of other expenses related to the organization of work in this manner.

b) Employees in quarantine and self-isolation

Employees who have been issued an act of self-isolation or quarantine by the competent authority shall be entitled to wage compensation.

Compensation for employees in self-isolation or quarantine is determined in accordance with the provisions of the Law on Health Insurance (“RS Official Gazette” No. 25/2019).

The employer pays the salary compensation for the first 30 days of absence, and upon expiry of the 30th day the salary compensation is paid by the Health Insurance Fund of the Republic of Serbia.

Employees who are in self-isolation or quarantine of the employer must notify by telephone or by electronic means, with the obligation to submit a scanned act of the competent authority attached to the electronic notification.

A certificate of temporary work disqualification, as well as a doctor's certificate of illness for an employee, may be submitted in the original by the employee or a member of his or her family when the reasons for which he/she was unable to provide the medical documents cease to exist.

c) Prekid rada do kojeg je došlo bez krivice zaposlenog

U slučaju da je kod poslodavca došlo do smanjenog obima posla ili prekida rada bez krivice zaposlenog, poslodavac može zaposlenog da uputi na tkz. „prinudni godišnji odmor“ i u obavezi da mu saglasno članu 116. Zakona o radu isplati naknadu zarade u visini od najmanje 60% prosečne zarade zaposlenog u poslednjih 12 meseci, s tim da zarada ne može biti manja od minimalne zarade u Republici Srbiji.

Poslodavac opštim aktom ili ugovorom o radu može da utvrdi veći iznos naknade zarade od iznosa od 60% od prosečne zarade zaposlenog u poslednjih 12 meseci.

Upućivanje zaposlenog na odsustvo po ovom odsustvu ne može da traje duže od 45 radnih dana u kalendarskoj godini.

Izuzetno poslodavac može zaposlenog da uputi na odsustvo i u dužem vremenskom periodu od 45 radnih dana u kalendarskoj godini, ali po dobijenoj saglasnosti ministra.

d) Prekid rada zbog naredbe nadležnog državnog organa zbog neobezbeđivanja bezbednosti i zaštite života i zdravlja

U odnosu na član 116. Zakona o radu, članom 117. Zakona o radu je predviđena situacija kada je do prekida rada došlo naredbom državnog organa ili organa poslodavca zbog neobezbeđivanja bezbednosti i zaštite života i zdravlja na radu, koja je uslov daljeg obavljanja rada bez ugrožavanja života i zdravlja zaposlenih i drugih lica.

Poslodavac je u ovim okolnostima dužan da zaposlenima isplati naknadu zarade u visini utvrđenoj svojim opštim aktom i ugovorom o radu.

c) Interruption of work that has occurred without the fault of the employee

In the event that the employer has a reduced workload or termination of work without the fault of the employee, the employer may refer the employee to the so-called “Compulsory vacation” and is obliged to pay him/her, in accordance with Article 116 of the Labor Law, a salary of at least 60% of the average salary of the employee in the last 12 months, provided that the salary cannot be less than the minimum wage in the Republic of Serbia.

An employer may, by a general enactment or employment contract, determine a higher amount of salary than 60% of the average salary of the employee in the last 12 months.

Sending an employee on a leave on these grounds may not exceed 45 working days in a calendar year.

Exceptionally, the employer may send the employee on a leave longer than 45 working days in a calendar year, but with the approval of the Minister.

d) Disruption of work due to an order of the competent state body due to a failure to provide safety and protection of life and health

In relation to Article 116 of the Labor Law, Article 117 of the Labor Law foresees a situation where the termination of work occurred by an order of a state body or an employer body for failure to provide safety and protection of life and health at work, which is a condition for further performance of work without endangering life and health of employees and other persons.

In these circumstances, the employer is obliged to pay the employees compensation in the amount determined by their general enactment and employment contract.

Zakon o radu upućuje da se visina naknade propiše opštim aktom, što znači da poslodavac ima diskreciono pravo da njenu visinu sam utvrdi.

Dodatno, uslov za primenu ovog instituta nije isključivo odluka nadležnog organa, već ovakvu odluku može da donese i nadležni organ poslodavca ukoliko nije u mogućnosti da u datim uslovima obezbedi zaštitu života i zdravlja zaposlenih na radu, koja je uslov daljeg obavljanja rada bez ugrožavanja njihovog života i zdravlja.

e) Pravo zaposlenog koji koristi godišnji odmor

U skladu sa odredbama Zakona o radu, u zavistnosti od potrebe posla, poslodavac odlučuje o vremenu korišćenja godišnjeg odmora, uz prethodnu konsultaciju sa zaposlenim.

Poslodavac može sve zaposlene ili zaposlene po organizacionim delovima da pošalje na kolektivni godišnji odmor, pri čemu poslodavac donosi rešenje o godišnjem odmoru gde navodi zaposlene i organizacione delove u kojima rade i isto je u obavezi da istakne na oglasnoj tabli društva, najmanje 15 dana pre dana određenog za korišćenje godišnjeg odmora, čime se smatra da je rešenje uručeno.

Za vreme korišćenja godišnjeg odmora, odnosno kolektivnog godišnjeg odmora, zaposleni ima pravo na naknadu zarade u visini prosečne zarade ostvarene u prethodnih 12 meseci.

f) Odsustvo zaposlenog po osnovu privremene sprečenosti za rad ili plaćenog odsustva

Zaposleni koji odsustvuje sa rada zbog privremene sprečenosti za rad, ima pravo na naknadu zarade i to najmanje u visini 65% prosečne zarade u prethodnih 12 meseci pre meseca u kojem je nastupila privremena sprečenost za rad, odnosno u visini od 100%

The Labor Law instructs that the amount of the remuneration shall be prescribed by a general enactment, which means that the employer has the discretion to determine its own amount.

In addition, the condition for application of this institute is not solely the decision of the competent authority, but such decision may be made by the competent body of the employer if it is not able to provide protection of the life and health of employees at work in the given conditions, which is a prerequisite of further work without endangering their life and health.

e) The right of an employee to use an annual leave

In accordance with the provisions of the Labor Law, depending on the job requirements, the employer decides on the time of vacation, with prior consultation with the employee.

The employer may send all employees or employees by organizational units for collective annual leave, whereby the employer makes a decision on annual leave stating the employees and organizational parts in which they work and is obliged to display it on the company bulletin board, at least 15 days before the day designated for the use of annual leave, whereby is deemed to have been served.

During the use of annual leave, i.e., collective vacation, the employee is entitled to the salary compensation in the amount of the average salary earned in the previous 12 months.

f) Absence of an employee on the basis of temporary inability to work or paid leave

An employee who is absent from work due to temporary inability to work is entitled to compensation of at least 65% of the average salary in the previous 12 months prior to the month in which temporary inability occurred, or up to 100% of the average salary in the previous

prosečne zarade u prethodnih 12 meseci pre meseca kada je nastupila privremena sprečenost za rad, u slučaju povrede na radu ili profesionalne bolesti.

Zaposleni ima pravo na naknadu zarade u visini prosečne zarade u prethodnih 12 meseci za vreme plaćenog odsustva, u slučaju sklapanja braka, porođaja supruge, teže bolesti člana uže porodice i u drugim slučajevima predviđenim opštim aktom ili ugovorom o radu.

g) Odsustvo zaposlenog po osnovu neplaćenog odsustva

U skladu sa članom 78. Zakona o radu, Poslodavac može zaposlenom da odobri odsustvo bez naknade zarade (neplaćeno odsustvo) kada zaposlenom miruju prava i obaveze iz radnog odnosa, ako za pojedina prava i obaveze zakonom, opštim aktom i ugovorom o radu nije drugačije određeno.

Poslodavac nema pravo da samoinicijativno i bez podnetog zahteva zaposlenog uputi na neplaćeno odsustvo.

Postojanje takvog pisanog zahteva daje poslodavcu opravdanje za donošenje rešenja o korišćenju neplaćenog odsustva.

Zakonom dužina trajanja neplaćenog odsustva nije definisana, to je ostavljeno poslodavcu i zaposlenom da sporazumno utvrde dužinu njegovog trajanja.

h) Višak zaposlenih

Ukoliko poslodavac utvrdi da je trajno prestala potreba za obavljanjem određenih poslova, odnosno da je došlo do smanjenja obima određenih poslova što za posledicu ima smanjenje broja izvršilaca na tim poslovima, poslodavac je dužan da donese program rešavanja viška zaposlenih, ako utvrdi da će

12 months before the month when temporary work inability occurred in the event of an occupational injury or occupational disease.

An employee is entitled to a salary compensation equal to the average salary in the previous 12 months during paid leave, in the case of marriage, childbirth, serious illness of a close family member and in other cases provided for by a general enactment or employment contract.

g) Absence of employee on the basis of unpaid leave

Pursuant to Article 78 of the Labor Law, the Employer may grant an employee leave without remuneration (unpaid leave) when the employee is entitled to a dormancy of employment rights and obligations, unless otherwise specified by law, general enactment and contract of employment for individual rights and obligations.

The employer does not have the right to refer the employee to unpaid leave without his or her request.

The existence of such a written request gives the employer justification for making a decision on the use of unpaid leave.

The length of unpaid leave is not defined by law, the employer and the employee shall agree on the period of its duration.

h) Redundant employees

If the employer determines that the need to perform certain jobs has permanently ceased, i.e., the reduction of the volume of certain jobs resulting in a reduction in the number of operators in those jobs, the employer is obliged to adopt a program for solving redundant employees, if it determines that due to

zbog tehnoloških, ekonomskih ili organizacionih promena u okviru perioda od 30 dana doći do prestanka potrebe za radom zaposlenih na neodređeno vreme, i to za najmanje:

- 1) 10 zaposlenih kod poslodavca koji ima u radnom odnosu više od 20, a manje od 100 zaposlenih na neodređeno vreme;
- 2) 10% zaposlenih kod poslodavca koji ima u radnom odnosu najmanje 100, a najviše 300 zaposlenih na neodređeno vreme;
- 3) 30 zaposlenih kod poslodavca koji ima u radnom odnosu preko 300 zaposlenih na neodređeno vreme.

Program je dužan da donese i poslodavac koji utvrdi da će doći do prestanka potrebe za radom najmanje 20 zaposlenih u okviru perioda od 90 dana, iz razloga navedenih u prethodnom stavu.

Poslodavac je dužan da u skladu sa članom 158. stav 1. Zakona o radu, zaposlenom isplati otpremninu pre otkaza ugovora o radu.

Ukoliko poslodavac ne isplati otpremninu, a zaposlenom prestane radni odnos, inspektor će vratiti na rad sve one zaposlene kod kojih poslodavac nije ispoštovao odredbe Zakona.

Visina otpremnine utvrđuje se kolektivnim ugovorom, pravilnikom o radu ili ugovorom o radu i ne može biti niža od zbira trećine zarade zaposlenog za svaku navršenu godinu rada u radnom odnosu kod poslodavca kod koga ostvaruje pravo na otpremninu.

technological, economic or organizational changes within a period of 30 days, the need for permanent employment of employees will cease, for at least:

- 1) 10 employees with an employer who has more than 20 and less than 100 full-time employees;
- 2) 10% of employees with an employer who employs at least 100 and a maximum of 300 full-time employees;
- 3) 30 employees with an employer who has more than 300 full-time employees.

The program shall also be issued by the employer, who determines that at least for 20 employees the need to work will cease within the 90-day period, for the reasons stated in the previous paragraph.

In accordance with Article 158, paragraph 1 of the Labor Law, the employer is obliged to pay the employee severance pay before the termination of the employment contract.

If the employer does not pay the severance pay and terminates an employee's work, the inspector shall return to work all those employees whose employer did not comply with the provisions of the Law.

The amount of the severance pay is determined by a collective agreement, a rulebook or an employment contract and may not be lower than the sum of one-third of the employee's earnings for each completed year of employment with the employer who is entitled to the severance pay.



Branka Marković
Partner, Tax&Outsourcing
branka.markovic@bdo.co.rs
+381 64 823 23 13



Nataša Sević
Legal Advisor
natasa.sevic@bdo.co.rs
+381 64 823 23 36



Jelena Šegrt Janković
Legal Advisor
jelena.jankovic@bdo.co.rs
+381 64 823 23 52

Knez Mihailova 10
11000 Beograd
+381 11 3281 399
tax@bdo.co.rs

Follow us on:



BDO Business Advisory d.o.o. Belgrade, a limited liability company incorporated in the Republic of Serbia, is a member of BDO International Limited, a UK based company limited by guarantee and a part of the international BDO network of independent member firms.

BDO is a brand name for the BDO network and each BDO member firm.

Copyright ©2018 BDO. All rights reserved.

www.bdo.co.rs