

Dispute concerning the draft law on private temporary-work agencies in Serbia

ESPN Flash Report 2019/42

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JULY 2019

Almost ten years have passed since the first private temporary-work agencies were established in Serbia, but their operation is still not regulated in one single coherent legal act. A draft law on temporary-work agencies was prepared in 2018, and is still in consultation with stakeholders – especially the social partners.



Description

Even though establishment of private temporary-work agencies was introduced in Serbia in the national Statistical Classification of Economic Activities (NACE) back in 2010, their operational framework has not yet been set out in one single coherent legal act. The only regulation, adopted in 2014, refers to technical requirements for premises and staff qualifications. Since 2010, the trade unions have regularly pointed to evidence of inadequate legal protection of these agencies' temporary workers, as very often they have not been entitled to the same rights as permanent employees. In 2016, the Ministry of Labour, Employment, Veterans and Social Policy appointed a working group, which included representatives from the trade unions and the Serbian Association of Employers (SAE) and which produced a draft law on private temporary-work agencies in October 2018.

The draft is largely aligned with the EU "Directive 2008/104/EC on temporary agency work" and with the national Labour Law. It defines the necessary elements of the legal relationship between the private temporary-work agency, the agency worker and the employer. It stipulates that the employer should treat temporary agency workers in the same way as the other employees who perform the same or similar work (i.e. in the same way as "comparable employees") in terms of duration and schedule of working hours, paid leave, calculation and payment of salaries, health and safety at work, and non-discrimination rules. The public

debate on the draft law was finalised at the end of November.

Trade unions submitted several proposals to amend the provisions they considered critical for the protection of workers' rights. The proposed changes include the following: the new registered agencies should provide a bank guarantee (€50,000), penalty provisions should be aligned with the Labour Law, the provisions on temporary agency worker's right to collective bargaining should be improved. Only one of all proposals made by the trade unions was accepted: a change of subsidiary responsibility to solidary in cases of disputes.

The SAE and the Foreign Investors Council (FIC) objected to the restriction on the number or proportion of agency workers who may be employed by a single company. As a measure to protect permanent employment, the draft law imposed a quota of 10% of temporary workers (out of the total number of employees at the time of contracting, i.e. including those on fixed contracts), and in exceptional cases 30% (dependent upon approval from the ministry). Business organisations, in particular the American Chamber of Commerce in Serbia, whose members are the US companies operating in Serbia, also objected to this, observing that these restrictions could potentially result in lower attractiveness of Serbia for foreign direct investment, lower "ease of doing business" in Serbia and worsening of workers' status. The second objection made by the SAE and the FIC refers to the application of the principle of equal treatment and equal

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pay, according to which “comparable employees” should be treated in the same way by the employer. In the discussion related to the application of this principle, the issue at stake is whether or not temporary agency workers should be compared with other employees in the same or similar work (provided of course that not all workers are temporary agency workers). The objection concerned inclusion of the notion of “similar work” which, according to the employers’ arguments, could be the subject of arbitrary interpretations.

It is important to highlight that a clear advantage for employers in Serbia to employ temporary workers is that they are not obliged to pay the severance payment for these workers when they become redundant due to technological or economic reasons. The severance payment is regulated by both the Labour Law and the employment contract; it cannot be lower than the sum of one third of realised annual wages, for every year the worker has been employed by the employer who has to pay the severance payment.

In February 2019, the legislator proposed a revised version of the draft law which did not include the provision on exceptional cases for restriction on the number of temporary agency workers; instead, an unlimited number of agency workers would be allowed for companies which employ up to 50 workers (in 2018 97% of all registered companies were in this category). Trade unions strongly opposed this revised version, on the grounds that in some companies all permanent workers might be replaced by temporary workers. The revised draft law also excluded the notion of “similar work” as proposed by the FIC despite the strong objections raised by the trade unions.

Trade unions also objected to the fact that youth and student

cooperatives were not covered by the draft law. These cooperatives have been present in Serbia for several decades. They are non-profit temporary-work agencies, whose operational framework is regulated by the Law on Cooperatives and by the lower order act “General rules on youth and student cooperatives”. The rules on taking on youth/student temporary workers are less strict than the provisions of the Labour Law and they ensure only a minimal set of workers’ rights. It is not clear why the legislator did not include these cooperatives in the draft law, as Article 1(2) of the EU Directive states that the Directive is applicable to all public and private temporary-work agencies, whether or not they are operating for gain.



Outlook and commentary

Over the last ten years, the number of private registered temporary-work agencies has grown to one hundred. It is estimated that in 2018 they employed around 100,000 workers, i.e. 3.5% of the national workforce. As these agencies are not obliged to report statistics to the National Employment Service (this would change if the law is passed), there is little transparency on their activities. Moreover, most temporary agency workers have a fixed-term contract and are therefore less well protected, since an employer can dismiss them without complying with legal procedures and without providing a severance payment. Fixed-term employment has increased in Serbia: from 10.8% in 2009 to 23% in 2018. In this context, the strong opposition from trade unions to the most recent version of the draft law is in line with the fairly negative view that the general public has on private temporary-work agencies.

Further delays to adoption of the Law on private temporary-agencies only prolong the present vulnerability of temporary workers. The law would bring an improvement for all parties. Moreover, Serbia is bound to regulate this area: it has ratified the International Labour Organisation “Private Employment Agencies” Convention (Convention C181) and this law has to be adopted for EU accession.

The Serbian parliament is now entering the summer recess and the draft law will not come onto its agenda before September. It will then be important and urgent that all parties involved find a good compromise in a tripartite social dialogue on this issue, as the current situation leaves temporary agency workers largely unprotected.

Further reading

AmCham Serbia (2018), Comments on the draft law on temporary-work agency (in Serbian): [AmCham comments on Draft Staff Leasing Law](#)

Draft law on Employment agency (in Serbian): <https://www.paragraf.rs/dnevne-vesti/061118/061118-vest11.html>

Foundation Centre for democracy (2016), “Regulation of work force leasing in Serbia” (in Serbian): <http://eukonvent.org/wp-content/uploads/2017/01/FCD-100-DANA-Regulacija-lizinga-radne-snage-u-Republici-Srbiji.pdf>

Ljiljana Stokić Pejlin (2017), Gaps in the regulation of private employment agencies in Serbia, ESPN Flash Report 2017/17, European Social Policy Network, European Commission: Brussels.

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Quoting this report: Ljiljana Stokić Pejlin (2019). Dispute concerning the draft law on private temporary-work agencies in Serbia, ESPN Flash Report 2019/42, European Social Policy Network (ESPN), Brussels: European Commission.