FINAL REPORT
ANALYSIS OF LABOUR LEGISLATION
IN BOSNIA AND HERZEGOVINA
with focus on rights of woman employed in service and trade sectors
FINAL REPORT

ANALYSIS OF LABOUR LEGISLATION IN BOSNIA AND HERZEGOVINA

with focus on rights of woman employed in service and trade sectors

Circulation: 200 copies

Sarajevo, 2016
As of November 2015, the Association “Vaša prava Bosnia and Herzegovina“ has been implementing the project “Reducing Workplace Exploitation and Improving Labour Rights Protection in Bosnia and Herzegovina“ supported by Canada Fund for Local Initiatives / Fonds Canadien d'Initiatives Locales, the aim of which is to strengthen the rights of employees, especially of women who work in the trade and service industry.

Specific project objectives have aimed to: educate citizens on legal mechanisms for the protection of labour rights; promote more active trade union involvement in resolving individual labour disputes; conduct detailed case law analysis on labour relations to define challenges in implementing existing legislation and evaluate the compatibility of labour laws with regulations; analyse the compatibility of BiH legislation on labour and employment with adopted international and EU obligations and regulations and identify recommendations for public policy development or modification; and finally, to promote and raise awareness of labour rights through court cases.
INTRODUCTION

At the end of 2015, new labour laws were adopted and entered into force in both entities of Bosnia and Herzegovina. Aside from the obvious significance of such legislation, both laws were adopted by quick legislative procedure with a notable lack of meaningful public discussion or consultations prior to the adoption of said laws. This also resulted in amendments to the law that had just been adopted, mere months after it entered into force in the Federation of Bosnia and Herzegovina.

The Association “Vaša prava” (Your Rights) from Bosnia and Herzegovina is particularly well-suited to contribute to the discussion on the new legislation. The Association has been active for 15 years and has 9 offices in both BiH entities where it continues to provide free legal aid to socially disadvantaged groups (citizens of BiH) on issues concerning labour law. This experience is especially important when evaluating the concrete, practical implementation of labour legislation, i.e. how it plays out in the actual employment relationship. Besides the problematic provisions that will be discussed later, the new labour legislation is in many ways also an improvement on previous labour laws. However, one should be careful not to jump to the conclusion that employees now find themselves in a better position in comparison to the last sixteen years when previous labour laws were in force in both entities. It is clear that no analysis of labour legislation is complete if it focuses solely on the formative level without reflecting on the issues of the implementation itself.

Inconsistent implementation of previous legislation was the cause of many violations of labour rights which often took the form of exploitation. This was primarily manifested in the widespread phenomenon of illegal employment (employment without an employment contract), frequently unpaid overtime work, work on days statutorily defined as non-working, work during state or religious holidays, deprivation of the right to annual leave, irregular pay checks accompanied by the practice of the employer taking back half of the paid salary, failing to pay benefits, the employees being afraid to take sick leave, and frequent exposure to non-physical abuse in the workplace (harassment), and exposure to arbitrary punishments for alleged transgressions, i.e. violation of work rules. The low level of labour legislation and the long court procedures in cases when citizens chose to protect their rights through the court, together with the dire economic and social situation, often forced employees to consent to exploitative working conditions since they believed there is no way
out. Unfortunately, the experience of the Association “Vaša prava of Bosnia and Herzegovina“ has shown that the adoption of new labour laws in Republika Srpska and the Federation of Bosnia and Herzegovina has yet to bring about meaningful change to reduce or eliminate the prevalent and systematic exploitation of employees in the workplace. In fact, some aspects of the new legislation could very well reinforce it.

As of November 2015, the Association “Vaša prava Bosnia and Herzegovina“ has been implementing the project “Reducing Workplace Exploitation and Improving Labour Rights Protection in Bosnia and Herzegovina“ supported by Canada Fund for Local Initiatives. The project purpose has been to increase the ability of women workers to exercise their rights, and to address the workplace exploitation of women in Bosnia and Herzegovina (BiH). Specific project objectives have aimed to: educate citizens on legal mechanisms for the protection of labour rights; promote more active trade union involvement in resolving individual labour disputes; conduct detailed case law analysis on labour relations to define challenges in implementing existing legislation and evaluate the compatibility of labour laws with regulations; analyze the compatibility of BiH legislation on labour and employment with adopted international and EU obligations and regulations and identify recommendations for public policy development or modification; and finally, to promote and raise awareness of labour rights through court cases.

Between December 7-20, 2015, six workshops/public discussions were held as part of the project in major cities in BiH (Sarajevo, Banja Luka, Tuzla, Mostar, Bijeljina and Prijedor), and an additional workshop was held in Sarajevo on February 11, 2016. The aim of these debates was to find answers to the ever more present exploitation in the workplace, ensure a more efficient mechanism of protecting the rights of employees, and create the conditions for a long-term improvement of working conditions and a higher living standard for the most disadvantaged population groups in Bosnia and Herzegovina. These workshops were also an opportunity to exchange experiences related to the implementation of the new legislation. The participation of employees as well as trade union representatives at these workshops/public discussions was absolutely invaluable.
INTRODUCTION ......................................................................................................... 1

1. CONCLUDING AN EMPLOYMENT CONTRACT .............................................. 5
   Federation of Bosnia and Herzegovina ........................................................ 5
   Republika Srpska .................................................................................. 7

2. PROVISIONS REGARDING DISCRIMINATION ................................................. 8
   Federation of Bosnia and Herzegovina ................................................... 8
   Republika Srpska .................................................................................. 10

3. WORKING HOURS, BREAK AND LEAVE OF ABSENCE ......................... 11
   Federation of Bosnia and Herzegovina ................................................... 11
   Republika Srpska .................................................................................. 12

4. PROTECTION OF EMPLOYEES ................................................................. 16
   Federation of Bosnia and Herzegovina ................................................... 16
   Republika Srpska .................................................................................. 19

5. SALARY AND COMPENSATION ................................................................. 20
   Federation of Bosnia and Herzegovina ................................................... 20
   Republika Srpska .................................................................................. 21

6. RESPONSIBILITY FOR BREACH OF WORK OBLIGATIONS AND
   LIABILITIES FOR DAMAGE ......................................................................... 22
   Federation of Bosnia and Herzegovina ................................................... 22
   Republika Srpska .................................................................................. 23

7. TERMINATION OF LABOUR CONTRACT, WELFARE PROGRAM FOR
   REDUNDANT EMPLOYEES AND TRANSFER OF EMPLOYMENT CONTRACT
   ........................................................................................................................................ 23
   Federation of Bosnia and Herzegovina ................................................... 23
   Republika Srpska .................................................................................. 28

8. PROTECTION OF RIGHTS ARISING FROM THE EMPLOYMENT
   RELATIONSHIP ........................................................................................... 29
   Federation of Bosnia and Herzegovina ................................................... 29
   Republika Srpska .................................................................................. 31

9. PARTICIPATION OF EMPLOYEES IN DECISION-MAKING, UNIONS,
   COLLECTIVE AGREEMENTS AND STRIKES ............................................ 32
   Federation of Bosnia and Herzegovina ................................................... 32
10. SUPERVISING THE IMPLEMENTATION OF LABOUR LEGISLATION AND PENALTY CLAUSES

APPROXIMATING LABOUR LAWS TO EU LEGISLATION AND OTHER INTERNATIONAL OBLIGATIONS

CONCLUDING REMARKS
1. CONCLUDING AN EMPLOYMENT CONTRACT

Federation of Bosnia and Herzegovina

Provisions of the previous Labour Law in FBiH stipulate that an employment contract can be concluded with a minor above the age of 15, with a confirmation from the authorized doctor or medical institution proving that s/he is able to engage in the required work activities. The contract is either permanent or fixed-term. A fixed-term contract shall be deemed to have become a permanent contract if the employee agrees, either expressly or implicitly, to conclude successive fixed-term contracts with the same employer in the total duration of more than two years, without interruption. The new Law contains the same provisions, but it also increases the protection of minors entering into contract in that it requires, in addition to the general conditions for engaging in work activities, the consent of the legal representative of the minor, which is an improvement on the previous Law since it reduces the possibility of exploiting minors in the workplace. As for fixed-term contracts, the Law stipulates that a such contracts cannot be concluded for a period of three years, which is a more restrictive legal solution since it prescribes a longer term for fixed-term contracts. Fixed-term contracts often primarily benefit the economic interests of the employer, so the decision to extend the duration of fixed-term contracts to three years leaves more space for the manipulation of employees than the previous law, even in situations where there is apparent need to have someone occupy the job position for the long-term. Although the new Labour Law contains an ostensibly more favourable solution stipulating that a contract shall not be deemed as terminated if there is a 60-day gap between two fixed-term contracts with the same employer,¹ unlike the previous provision under which this period was 15 days, in practice the new legal solution proves to be more restrictive and unfavourable to the material and social security of employees.²

The new Law also requires contracts to be concluded in written form and contain all the compulsory elements stipulated by the previous law. But the novelty of the new Labour Law is the provision regarding the situation in which the employer does not conclude a written contract with the employee, while the employee performs the work activities and receives compensation for it. The Law considers this to be a permanent contract, unless the employer

¹ Article 23 of the Labour Law
² Article20 Paragraph 1 Item 7 of the Labour Law
can prove otherwise. In current conditions of labour market in BiH, illegal work is a very frequent occurrence, especially in the real sector and especially when it comes to employing the most vulnerable groups who often end up in lowest-ranked and worst-paid jobs (trade, construction work, the service industry, crafts, agriculture etc.). If this measure was to be consistently implemented, it would significantly reduce the exploitation of illegal employees. Also, this measure can be considered affirmative since the legislators have transferred the burden of proving that a permanent contract has not been signed onto the employer.

According to the new Labour Law, the employer is required to present the employee with written evidence and copies of the mandatory insurance registration from the date when the contract was concluded, i.e. since the start of the employment relationship, as well as all insurance changes that affect the employee. This measure is an improvement on previous solutions, since previously the employees would find out they were not in fact registered for insurance only when they tried to exercise some of the rights guaranteed by provisions on obligatory insurance (medical care, disability pension etc.) Another novelty in the Labour Law is the introduction of working outside the workplace which stipulates that a contract can be signed for work activities that the employee performs from his/her home or in another space provided by the employee, in accordance with the collective agreement and the Rulebook.

As for education and vocational training, the previous Law allowed for the possibility to conclude an internship contract with a trainee for the usual duration of the internship regulated by a given profession. The trainee had to right to receive 80% of the lowest salary during his/her traineeship. However, the new Labour Law provides a qualitatively better deal for the employee because the employer can now conclude an employment contract with the trainee during the training period which entitles the trainee to 70% of the determined salary for the work he/she is being trained to do.

Also, the previous legislation stipulated that if the law or the Rulebook make a license exam or work experience a necessary prerequisite for engaging in certain work activities, the employer could hire a person who has been educated in this field and such work was considered to be volunteering. The current Law abandons the term “volunteer work“ and introduces minor changes regarding the deadlines for registering with the employment service and the right for insurance benefits against accidents at work or occupational disease, since previously the employers transferred this responsibility onto the trainees who were going through vocational education and training with this employer, regardless of the fact that they were contributing to the employer’s job operations without compensation.
Republika Srpska

According to the new Labour Law an employment contract must be a permanent one and only under special conditions prescribed by Article 39 of the Law can a fixed-term contract be concluded. The new law retains the obligation to have the contract in written form, containing all the mandatory information, but the contract can also contain other information which the employer and the employee deem useful in regulating their employment relationship. Also, the Contract can include rights and obligations that are not regulated by the general law. A copy of the sealed Contract is presented to the employee before the commencement of employment and if the employee starts performing work activities without a contract, then it is presumed that the employee has entered into a permanent contract. The date of concluding the contract is not the date of employment, but rather the date when the employee begins to engage in work activities.

An employment contract can also be concluded for a work probation period, or a separate contract for probationary work can be signed with the employee, but no more than two times with a maximum period of three months. Work trial is subject to professional supervision and evaluation. The supervisor is a person who is skilled in performing the job and is an employee of the same employer. Probation period has all the features of a regular employment relationship and the employer has the right to terminate the contract before the time during which it was to remain operative, with a 7 day notice period and a written explanation delivered to the employee. The explanation of the decision is based on the opinion of the supervisor which is why choosing the supervisor is very important. The probation period does not obligate the employee to conclude a contract with the employer and the contract, and by proxy the employment relationship as well ends with the expiration date determined by the contract.

The new Law changes the legal circumstances, important for determining its validity, in which a fixed-term contract can be concluded. The expiration of contract also signals the end of the employment relationship for the employee. The new Law also sets the period of implicit agreement by the employer following the expiration of a fixed-term contract to five working days. After this period, the employee enters into a permanent contract. The new Law stipulates that fixed-term contracts can have a maximum term of 24 months, but can be extended with unemployed persons who are 5 years away from meeting the age pension requirements.
The new Law also regulates part-time employment contracts, (that cannot carry fewer than ¼ of the total weekly work hours), the continuation of a contract for a position with special conditions of employment and takes from the previous Law provisions regarding contracts for work carried outside the premises of the employer, which can include home assistants, a trainee and a director.

The new Law replaces volunteer contracts with vocational education and training contracts. This was done in order to harmonize the Labour Law and the Volunteering Law. Aside from volunteers and persons seeking employment, employees can also undergo vocational training. During vocational training, the employee continues to receive the same salary. If the employee decides to abandon vocational training, s/he shall pay compensation to the employer.

2. PROVISIONS REGARDING DISCRIMINATION

Federation of Bosnia and Herzegovina

Unfortunately, discrimination in exercising employment rights is ripe in the transitional market economy currently in place in BiH. It is manifested in the mistreatment of employees by their employers and is most pronounced in service and trade sectors, and particularly towards one of the most vulnerable groups – female employees.

The previous Law featured just one provision prohibiting discrimination on various grounds against persons seeking employment and persons who obtain employment and prescribing judicial protection in case of rights violations.3 The burden of proof falls to the defendant/employer only if the plaintiff can present clear evidence of discrimination forbidden by Article 5 of the Law. The time period to submit the request to exercise the right is not explicitly defined. Instead, Article 103 of the same Law – prescribing a time period of one year from the delivery of the decision on rights violation, i.e. the day the employee learnt his/her right was being violated - is used.

In 2009, the BiH Law on Prohibition of Discrimination was adopted, stipulating that: “Discrimination, in terms of this Law, shall be every different treatment including every exclusion, limitation or preference based on real or assumed features towards any person or group of persons on grounds of their race, skin colour, language, religion, ethnic affiliation,

---

3 Article 5 of the Labour Law and the Law on Amendments to the Labour Law, “Official Gazette of Federation of BiH” No. 43/99, 32/00 and 29/03
national or social origin, connection to a national minority political or any other persuasion, property, membership in trade union or any other association, education, social status and sex, sexual expression or sexual orientation, and every other circumstance with a purpose or a consequence to disable or endanger recognition, enjoyment or realization of rights and freedoms in all areas of public life. The same law defines forms of discrimination. Concerning labour legislation, the law recognizes harassment as a form of non-physical abuse in the workplace that implies repetitive actions with a humiliating effect for the victim, the purpose and consequence of which is the degradation of the employee’s working conditions or professional status. Articles 12 and 13 of the Law regulate judicial protection and stipulate that the deadline to submit the lawsuit is three months from the day of discovering the violation of right and one year from the day the violation was committed at the latest. These deadlines are significantly shorter when it comes down to initiating the procedure, and as far as filing a timely lawsuit and the court procedure to determine discrimination are concerned, a very important element has come to the fore – the last act of mobbing which has to be clearly defined and easily provable.

The Law that entered into force in August 2015 also contains detailed provisions, which are in line with the Law on Prohibition of Discrimination, prohibiting any discriminatory behaviour against an employee or a person seeking employment. For the first time, the Labour Law od FBiH features a clear list of the forms and types of discrimination, abuse or sexual harassment, gender-based violence as well as systematic harassment at work or in relation to work (mobbing) of employees or persons seeking employment with an employer, prohibition of discrimination, exemption from anti-discrimination provisions and protection in cases of discrimination. Although this is a huge improvement on previous (rather inadequate) legal solutions regarding discrimination in FBiH, it is very likely that in practice problems will arise when seeking protection from discrimination, since the deadlines are much shorter than those prescribed by the Law on Prohibition of Discrimination. The Labour Law stipulates that in cases of discrimination defined by the Law an employee or a

---

5 Articles 3 and 4 of the BiH Law on Prohibition of Discrimination
6 Articles 8 through 12 of the FBiH Labour Law (Official Gazette of FBiH no. 62/15)
7 Articles 8 and 9 of FBiH Labour Law (Official Gazette of FBiH no 62/15)
8 Article 10 of FBiH Labour Law (Official Gazette of FBiH no. 62/15)
9 Article 11 of FBiH Labour Law (Official Gazette of FBiH no. 62/15)
10 Article12 of FBiH Labour Law (Official Gazette of FBiH no. 62/15)
job-seeker may request protection from the employer within 15 days from learning of the discrimination. If the employer fails to respond within 15 days from when the request was filed, the employee has a further deadline of 30 days to file a lawsuit with the competent court. Even though this analysis was written shortly after the entry into force of the new law, this provision has already been considered problematic. The employees are often not aware of the statute of repose and file their requests too late, which could result in inadequate protection for employees and job seekers.

As in the Law on Prohibition of Discrimination, the burden of proof falls on the employer, if the prosecutor presents evidence to support a claim that the employer violated the provisions of the Labour Law and the Law on Prohibition of Discrimination.

Republika Srpska

The previous Law also stipulated prohibition of discrimination on various grounds against job-seekers and persons who obtain employment and prescribed judicial protection in cases of rights violation. But the Labour Law of RS went a step further than the Labour Law of FBiH and dedicated an entire chapter (Chapter VIII) to the prohibition of discrimination, in addition to the general provisions of Article 5. Chapter VIII explained in detail the forms of discrimination, transferred the burden of proof to the defendant in cases where there was reasonable doubt that the employer violated Article 111, Paragraph 1 of the Labour Law,\(^{11}\) and prescribed judicial and extrajudicial protection from discrimination. The deadlines for submitting a request for rights protection/filing a lawsuit with the competent court were not explicitly stated, so the deadlines that were in use were those prescribed by Article 105 of the same Law - a year from the day of learning that a right was violated and three years from when the violation was committed at the latest, as well as Article 106 which tied compensation claims to the Law on Contractual Relations.

The new Labour Law basically took over the existing regulation.\(^{12}\) The Law describes forms of discrimination, transfer of the burden of proof to the defendant in cases where there is reasonable doubt that the employer violated Article 24, Paragraph 1 of the Labour Law,\(^{13}\)

\(^{11}\) “Abuse and sexual harassment, gender-based violence as well as systematic harassment of employees by the employer and other employees – mobbing – is prohibited.”

\(^{12}\) Official Gazette of Republika Srpska no: 1/16

\(^{13}\) “Abuse and sexual harassment, gender-based violence as well as systematic harassment of employees by the employer and other employees – mobbing – is prohibited.”
judicial and extrajudicial protection against discrimination. Unlike the Labour Law of FBiH, the RS Law does not specify deadlines for submitting a request for rights protection/filing a lawsuit with the competent court, so the deadlines that are in use are those prescribed by Articles 200 and 201 of the same Law and Article 148, which ties compensation claims to provisions of the Law on Contractual Relations.

This analysis was written only a short time after the Labour Laws of Federation of BiH and Republika Srpska entered into force. However, we can see that discrimination has been harmonized in the new legislation – in terms of defining discrimination and its forms – but when it comes to provisions on protection against discrimination, there is variety of deadlines and protection mechanisms, which represents an obstacle for employees and job-seekers in protecting their labour rights.

3. WORKING HOURS, BREAK AND LEAVE OF ABSENCE

Federation of Bosnia and Herzegovina

Working hours are basically defined in the same way in both the old and the new labour laws in terms of duration of full-time work, overtime work, night work and redistribution of working hours. However, the new Law also introduces certain novelties such as clearly defining the notion of working hours as well as the rights and obligations it implies, introducing the legal concept of stand-by time, which is not included in work time and for which compensation is given in accordance with the collective agreement, the Rulebook or the employment contract. The Law also introduces for the first time the employer’s obligation to keep daily records of employees and other persons engaging in work activities.

Practice shows that the most flagrant violations of labour laws by employers concerns working hours. Rarely do employers comply with provisions stipulating the duration of the workday. Employees, especially those in the trade sector and the service industry, practically do not have set working hours, there is no record of the attendance of employees, overtime work is not paid, and the employees are expected to always be at the employer’s disposal and do well in their jobs, depending on the needs of the employer. Since there are few job positions on offer and the material and social conditions as well as the state of the economy are dire, employees are, in essence, forced to accept these conditions and work as much as is
required of them. Violation of provisions by employers have far-reaching consequences that often, due to the exhaustion of employees, lead to deteriorating health, ever more frequent injuries at work and sometimes even casualties.

Breaks during working hours, daily and weekly rest are regulated in a similar way in both the previous and the new Law. Regarding annual leave, the new Labour Law introduced changes to minimum and maximum annual leave, with minimum annual leave being 20 days (previously it was 18) and maximum annual leave being limited to 30 days. This provision could prove problematic in practice for employees who work in jobs where, irrespective of labour protection measures, they cannot be protected from harmful effects and who were entitled to minimum annual leave of 30 days under the previous Labour Law (workers working in high/low temperatures, working underground, operating x-ray machines). Another novelty is that in case of a termination of contract, an employee who did not use all or part of his/her annual leave through a fault of the employer may request to be paid compensation in the amount s/he would have received. There is discrepancy between the normative and the practical when it comes to these provisions, because employers often do not grant the prescribed annual leave, which might have grave repercussions for the health of the employees.

**Republika Srpska**

This area has seen major changes in comparison to the previous law. The concept of stand-by is introduced for the first time. The employee must report to duty if the need for it arises while not being present either in the workplace or in another location designated by the employer, yet stand-by is still not included in working hours. The introduction of stand-by gives employers the right to interfere with the employee's right to a break (daily rest between two consecutive working days), which is one of the basic rights guaranteed to all workers\(^\text{14}\). For this reason the labour law or the collective agreement should regulate stand-by time and the compensation for it.

\(^{14}\) EU Working Time Directive (2003/88/EC) guarantees the following rights:

- a limit to weekly working hours, which must not exceed 48 hours on average, including any overtime
- a minimum daily rest period of 11 consecutive hours in every 24
- a rest break during working hours if the worker is on duty for longer than 6 hours
- a minimum weekly rest period of 24 uninterrupted hours for each 7-day period, in addition to the 11 hours' daily rest
The new law regulates: full-time work, part-time work, reduced working hours, overtime work as well as night work and work in shifts. The provisions of the Law confirm full-time work to be 40 hours per week and stipulate that a full-time employment contract can be concluded with one employer only. Unlike the previous Law, the new Law defines the duration of part-time work and stipulates that it cannot be less than one fourth of full-time work.

The previous Law did not define reduced working hours as a type of work arrangement. Reduced working hours only existed in connection to hazardous occupations. The new Law does not introduce significant changes when it comes to this issue: working hours are still being reduced in proportion to the harmful effects of the working conditions on the health of the employee and can be reduced by ten hours per week maximum, but the new law introduces reduced working hours for hazardous occupations, which is a clear signal that legislators were trying to harmonize the legislation with the Directives of the European Union.

The new Law did not change the definition of overtime work as working longer than full-time hours but it did increase the yearly overtime quota from 150 to 180 hours. Also, the collective agreement can set the maximum limit of overtime work to 230 hours per year. The new Law stipulates that the employee has the right to an increase in salary for overtime work but does not specify in what amount, which effectively abolishes the provision of the previous Law stipulating that the salary must be increased by at least 30% in relation to the existing salary. It should be noted that the new Law defines duty at the workplace as overtime work.

The new Law does not change the provision prohibiting overtime work for minors under 18 years of age, pregnant women and mothers with children of up to three years of age, single parents or persons who have adopted children under the age of six; the employer can assign them work if a written request is presented by the employee.

The new Law introduces changes into the working schedule for the sake of clarifying some of the provisions. The Law prescribes a 5-day work week and an 8-hour workday, obliging the employer to draft a 30-day work schedule, and announce it in the most convenient way possible and to keep daily records of when employees start and finish their workday, which will be of great use to the employees in filing legal claims against their employers in order to protect their rights and the rights to pay and benefits.

The second change that benefits the employees is the adoption of the Rulebook by the Ministry of Labour and War Veterans that will prescribe how to keep record of the employees' attendance and make it impossible for employers to go against the interest of the
employees since the Rulebook will provide forms in which to note down necessary information about the workday of every employee. The forms provided by the competent ministry can then be used by employees and their legal representatives as evidence in litigation to prove facts that are relevant for the procedure and contained in the forms. It is to be expected they will be issued once the law enters into force (January 20, 2016).

According to the new Law, the redistribution of working hours is in the authority of the employer, but employees must be notified of any changes within 24 hours at the earliest or 5 days at the latest. Furthermore, if working condition allow for it (i.e. working in shifts), the employer can assign employee to different workweeks in a way that is most suitable to the organization of labour, whereby an employee can work a maximum of 12 hours per day or 48 hours per week.

The new Law does not make any fundamental changes to the redistribution of working hours but it does contain better formulations. According to the Law, the employer still has the right to redistribute full-time working hours, with working hours being longer in one period of the year and proportionally shorter in the other, but on average remaining within the legal limit of 40 hours. Working hours could also be redistributed so as to have a maximum of 52 working hours per week in one period of the year and up to 60 hours a week for seasonal jobs. Such redistribution is not considered overtime work.

The provision defining night work as work in the period between 22:00 and 06:00 o’clock remained unchanged. Changes were made to provisions regarding night work for employees under 18 years of age, whereby night work was defined as work in the period between 19:00 to 06:00. The new Law also prohibits night work for employees under 18 years of age. It is allowed only in special situations with the approval of a labour inspector.

The new Law introduces shift work as a separate work arrangement. This type of work is defined as working in shifts that rotate according to a set schedule, whereby shifts can either be continuous or semi-continuous. It is important to note that shift work is regulated by the employer’s general act or employment contract. The employee can perform continuous night work for longer than one working week only if s/he gives his/her consent, with shift work also bringing higher pay, although the amount is not specified.

The employer is the one who decides on the schedule of rest periods during the workday. The decision is made according to the nature of the work. The new Law retains the provision that an employee who works full-time or a minimum of 6 hours a day has to right to a 30-minute rest, with the limitation that s/he cannot use the break during the first two or the last two hours of the workday. The Law also introduces for the first time the right to a 15-minute
break for employees who work more than 4 and less than six hours. It also introduces an additional 15-minute break for employees who work longer than full-time, a minimum of 10 hours. The Law also retains the provision that employees have the right to 12 hours of uninterrupted rest between two successive workdays, 10 in agricultural or seasonal work. Using this rest period endangers the concept of the employee having to be on stand-by even after the workday is finished. The weekly break is still set to at least 24 uninterrupted hours, with 8 hours of additional rest between two successive workdays, while the employer retains the right to designate a different rest day due to the nature of the job.

The new Law also stipulates the right to annual leave. This right is acquired after six months of continuous work. The annual leave is regulated by the general act and the employment contract. It should be a minimum of 4 working weeks, i.e. 20 days, and is extended according to service years. Employees in hazardous occupations have the right to a 30-day annual leave which is extended according to service years. The workday is 5 days long. The new Law does away with some of the vagueness of the previous Law related to annual leave. Annual leave does not include periods of absence caused by other reasons, i.e. holidays that are statutorily defined as non-working days, paid leave of absence or temporary inability to attend work according to health insurance regulations are not considered part of annual leave and in these cases annual leave is discontinued until the other leave of absence is over. This is how the legislators solved the dilemma and confirmed that the right to annual leave cannot be diminished by other rights (right to sick leave, etc.). The employer shall make an annual leave schedule. Annual leave can be used without interruption with the consent of the employer or in two or more segments, but it must be used up by June 30 of the following year. The right to annual leave is a permanent category, employees cannot waive their entitlement to annual leave nor can it be denied to them. During the annual leave the employer cannot cut the employee’s salary since s/he is considered to be at work. The employee also has the right to annual leave allowance. In case the employee terminates the contract with the current employer in order to enter into contract with a new employer, the annual leave will be used with the employer with whom the entitlement was acquired prior to the cessation of the employment relationship. The employer is obligated to grant annual leave to an employee who meets the age pension requirements and is therefore about to terminate the contract with the employer and the employee whose fixed-term contract is expiring. If the employer fails to do so, the employee is entitled to compensation in the amount of the average salary and in proportion to the unused leave.
Paid leave is the right of the employee to miss 5 working days in a calendar year for reasons stated in the law. In some cases the paid leave can be extended with the agreement of the employer. In case of force majeure or machine breakdown the employee has the right to paid leave during which s/he is paid 50% of the usual salary. The employee also has the right to unpaid leave of 3 days.

Interestingly, the new Law reintroduces the legal concept of temporary layoff, to which an employee may be referred in cases of unplanned, temporary cut-down in the scope of work or due to reasons of economic or technological nature. Temporary layoff and absence from work is regulated by the collective agreement, and the employee is entitled to at least 50% of the average salary made in the last three months.

Job-protected leave means that the rights, obligations and responsibilities arising from an employment relationship are not active for a specific time period, but the employee remains employed. Job-protected leave applies only to employees on a permanent contract. Once the reasons for the job-protected leave are over, the employee must return to work within 5 days. In case the employee is not able to return to work, the employer can terminate the contract, with the employee having the right to compensation.

4. PROTECTION OF EMPLOYEES

Federation of Bosnia and Herzegovina

Despite the fact that employers have the obligation to ensure safety and protection in the workplace, in reality the employees often find themselves in inadequate working conditions without the necessary protection measures, safety equipment, etc., which results in their health or lives being in danger while in the workplace. The new Law puts special emphasis on protecting minors and has introduced several amendments in that area that have ensured improved legal protection of minors.

Both the old and the new law cover in detail the protection of women employees and motherhood: rights during pregnancy and maternity leave, right of women to absence leave during breastfeeding, the right of mothers who gave birth to twins or three or more children to work part-time. Unlike previous legislation, the new Labour Law states that an employer cannot terminate the contract with a pregnant women employee or a woman who is exercising one of the following rights: using maternity leave, using the right to work half of full-time hours after maternity leave, using the right to work half of full-time hours until the child turns
three if the findings of the competent medical institution show that the child is in need of advanced care, nor if she is using her right to absence during breastfeeding. For the first time the Law stipulates that the father can use parental leave 42 days after the birth of the child, if so is agreed between the parents, as well as the right to work half of the full-time working hours after the maternity leave is over in case of twins, the third or any subsequent child, if the mother works full-time. We see that the normative framework is quite satisfying, but the implementation of these provisions is problematic. Pregnant women are seldom employed and face numerous obstacles when trying to exercise their legally guaranteed rights. This is primarily evident in not being able to use a one-year long maternity leave, i.e. going back to one’s job position after using the maternity leave, while the concept of working half of the full-time working hours is virtually unheard of. It should also be emphasized that provisions on social protection giving employed women/mothers the right to compensation (which are not the focus of this analysis) affect to a significant degree the implementation of the aforementioned provisions in practice. Primarily we have in mind uneven social welfare benefits in different cantons or the complete non-existence of maternity allowance in some cantons. Having all of this in mind, and taking into account the socio-economic situation, it is not rare to see that women, on the one hand, do not exercise their rights, while, on the other hand, employers pressure women in returning from maternity leave as soon as possible and to not use other rights they are entitled to, which puts women/mothers in an unfavourable position.

Provisions regulating protection of employees who are temporarily incapacitated due to an injury at work or occupational disease have not been changed. However, when it comes to temporary inability to work that is unrelated to occupational disease or injuries at work, the new Law is less favourable to employees because it stipulates that an employer is obligated to allow the employee to return to doing work which s/he performed before the disease or injury, or perform other equivalent work, but only for a six-month sick leave. A longer absence means that the employer can assign the employee to other jobs according to his/her qualifications and skills. If this is not possible, the employer may terminate the employment contract, after holding consultations with the Council of Employees. Such a solution puts the employees in an unfavourable position, because an employee who exercises his/her guaranteed right and takes more than 6 months of sick leave can expect the termination of his/her contract which undermines his/her material and social security.

As for employees with altered work capacities, the new Labour Law regulates this situation in greater detail and once again limits employees' right in comparison to previous legislation.
According to the previous Law, if an employee's work capacity is altered or s/he is at risk of disability, the employer is obligated to offer in written form other jobs which the employee is capable of performing. The employer may terminate the contract of an employee with altered work capacity or an employee who is at risk of disability only with prior consent of the Council of Employees\textsuperscript{15}. The new Law regulates this situation in Articles 73 and 74 in a way that may be less favourable to employees, since it states that in case of altered work capacity and risk of disability of the employee the employer is obligated to offer a new employment contract for a job which the employee is capable of doing, if such a job exists, i.e. have the employee go through additional training and retraining and assign him/her to a new work task, if possible. When it comes to terminating the contract in these situations, the new Law partly borrows the previous legal solution according to which the employer may terminate the contract of an employee with altered working capacity, but only with prior consent of the Council of Employees. In addition to requiring the consent of the Council of Employees, the new Law also requires consent of the trade union, if these have been established with the employer in question.

Furthermore, the Law states that if the consent is withdrawn, the employer may seek arbitration to resolve the dispute in accordance with the collective agreement and the Rulebook. If dissatisfied with the outcome of arbitration, the employer may, within 15 days of the date of service or arbitration award, request the substitution of said consent with a court decision. If the contract is terminated in this way, the employee is entitled to severance pay in the amount increased by at least 50\% in comparison to the severance pay from Article 111 of the Law. The said legal solution is ostensibly a better way to regulate such situations, but the reality is quite different. Provisions defining the procedure of obtaining consent from councils of employees and trade unions, arbitration and particularly court decisions are unclear, and since the Law has been in force for a very short period of time, the lack of practice is also a problem. Also, even though it specifies higher severance pay in case of dismissal, the employees \textit{de facto} remain in a disadvantaged position since they now find themselves without a job and with altered working capacity – this is particularly true in situations of injury at work or occupational disease. In practice it means that the employer provides protection to the employee while the latter is temporarily incapacitated, but once the employee returns to the workplace with altered working capacity, s/he is no longer protected by this statute and the employer could terminate the employment contract in line with the above provisions.

\textsuperscript{15} Articles 66 Paragraph 1 and 67 of the Labour Law
The protection of employees is the employer’s obligation. The employer must allow employees to familiarize themselves with labour regulations and occupational safety and health regulations within 15 days of the commencement of employment. If necessary, the employer shall refer the employee to enhance his/her knowledge of occupational safety and health regulations. If the employer fails to comply with provisions regarding the protection of employees and this leads to an accident at work and serious damage to the employee, the material and the legal responsibility falls onto the employer.

The employee has the right to refuse to work if his/her life or the lives of other persons are threatened. The employee shall inform the employer and the labour inspectorate of the reasons behind his/her refusal. If through negligent behaviour the employee suffers an accident at the workplace or causes material damage he/she will be held responsible for breach of work obligations. The new Law introduces the employee's right to access documentation related to him/her which is kept by the employer and also introduces the right to data protection, whereby access to employees' data can be granted to a third person only if it is necessary to prove labour rights and obligations.

An employee under 18 years of age cannot be assigned to tasks that carry increased risk to his/her life, health and mental development. High-risk jobs are determined by the competent labour ministry through the Rulebook and not through the collective agreement as was the case with the previous Law, whereby protection of minors is ensured on entity level. Full-time working hours cannot exceed 35 hours per week, or 8 hours per day for minors. Evaluation of the working ability of an employee under 18 years of age is the employer’s obligation and is to be borne by him/her.

As in the previous RS Labour Law, the new Law specifies that an employer cannot refuse to employ a woman on account of her pregnancy, or terminate her contract on account of pregnancy or using maternity leave. During pregnancy, delivery and child care women are entitled to maternity leave of one year without interruption. For twins, the third and each subsequent child women are entitled to 18 months of uninterrupted maternity leave. The Law introduces a novelty in Article 107, Paragraph 4 which stipulates that women/mothers gain the right to pension with one less year of pensionable service for every child in relation to
pension requirement stipulated by the Pension and Disability Insurance Law. Another novelty is that maternity leave compensation is calculated based on the average amount of the last 12 (not 3, as the previous Law stated) monthly salaries the employee received prior to her maternity leave.

Sick leave has remained almost unchanged in the new Law, but some formulations have been tweaked for the sake of clarification. The employment contract of an employee who is temporarily incapacitated due to an injury at work or an occupational disease still cannot be terminated. As before, the period of temporary inability to perform work shall not be included in the contract duration, which is particularly important for employees on fixed-term contracts. After recuperating, the employee is entitled to return the work if an authorised doctor of medicine has established that s/he is fit to go back to work. If there is no longer any need for the work performed by the employee prior to becoming temporarily incapacitated, the employer is obligated to offer an employment contract for other, appropriate jobs. If the employee refuses the offer, the employer is entitled to terminate the contract in accordance with legal regulations, except in cases when an employee is suffering from a work-related injury or occupational disease.

Both the old and the new Law stipulate that an employee shall notify the employer of temporary incapacity, to work within three days from the day of becoming incapacitated, and provide confirmation from the competent doctor of medicine. In case of illness, the confirmation shall be delivered by his/her family members, and if the employee lives alone, within three days after the illness is over. If in doubt, the employer is entitled to initiate proceedings to ascertain the medical fitness of the employee and contest the validity of the certificate issued by the doctor of medicine. The certificates issued by doctors of medicine are uniform, their issuance and content is prescribed by the competent ministry of health and social protection and they can be used as evidence in civil procedure.

5. SALARY AND COMPENSATION

Federation of Bosnia and Herzegovina

The provisions of the new Labour Law related to salary and compensation of salary have been changed from the previous Law. According to the new Law, the salary for the work performed and time spent at work consists of basic salary, part of salary related to performance and increased salary for difficult working conditions, overtime work and night work, as well as
work on the days of weekly breaks, holidays or other days statutorily defined as non-working. Minimum salary is still defined by the collective agreement and the rulebook. But the new FBiH Labour Law also specifies that the Government of FBiH shall, upon consultations with the Economic and Social Council of FBiH, harmonize the minimum salary at least once a year, in line with the index of consumer prices. This is something that the previous Law did not mention and the provision can prove to be favourable to the employees if it is consistently implemented in practice.

One of the most important and most positive novelties is that an employer who fails to pay the salary within 30 days, or fails to pay the full amount, shall hand over a payslip denoting the calculated salary by the end of the month in which the salary was due. The payslip shall be considered a writ of execution\textsuperscript{16}. There are multiple positive legal consequences of this provision, both for the employees and for the courts. Up until now the courts were overwhelmed by the number of labour disputes in which employees demanded their unpaid salaries. This required initiating a long court procedure, with a financial expert carrying out an assessment and determining the amount of due, unpaid salaries, on the basis of which the court then decided to rule that the employer must pay the salaries. This first-instance verdict was usually appealed, initiating a long second-instance procedure. Only after the second-instance decision did the employee have a legally binding verdict to use for enforcement. All of this required significant resources, paying court costs and devoting a lot of time. The new payslip executive writ contains all the elements that would be identified by a financial expert, and therefore provides employees with a more efficient, inexpensive way to exercise their right to a salary. As for compensation of salary, the new Law is identical to the old legislation.

\textbf{Republika Srpska}

The New Law prescribes a new way of calculating salary. Article 122 states that a salary for the work performed and time spent in work shall consist of basic salary and part of salary for performance. Basic salary is calculated based on the conditions needed to perform the work for which the employee signed the contract and which is defined by the general act, as well as time spent in work. Work performance is determined on the quality and the scope of the performed job, as well as on the employee’s contribution to the business results of the employer determined by the general act, the employment contract and other acts of the

\textsuperscript{16} \textit{Article 80 Paragraphs 1 and 2 of the FBiH Labour Law}
employer. Since the terms are defined in a general, imprecise manner, especially the terms basic salary and work performance, the employer has greater power in calculating the employee's salary.

The new Law also reduces salary compensation based on years of service. Now the employee's salary is increased by 0.3% for every year of service, unless specified otherwise by other laws, the collective agreement or the employment contract. According to previous provisions, the increase was 0.50% for every year of service.

If legal acts do not determine the cost of labour in a certain area or branch, the cost of labour shall be determined by the Government of RS, upon prior consultation with the Economic and Social Council, and upon the request of the interested party. Also, if the Economic and Social Council does not put forth a proposition, the decision on minimum salary is made by the Government of RS based on fluctuations of salaries, production growth and the living standard in RS. Other work-related earnings such as daily wages, travel reimbursement, meal allowance etc. are listed, and their amount and the conditions for receiving them are specified by the collective agreement. The Law does not define minimum earnings. Another novelty is that the payslip functions as executive writ.

6. RESPONSIBILITY FOR BREACH OF WORK OBLIGATIONS AND LIABILITIES FOR DAMAGE

Federation of Bosnia and Herzegovina

Provisions regulating compensation for suffering damage at work or in relation to work have been taken over from the previous FBiH Labour Law. Although the provisions are clear and unambiguous, they are often either not implemented or misused in practice. In the trade sector and the service industry for example, in cases of shortage of goods/materials, damage or theft, the employer often seeks compensation for damage from the employee, without previously establishing that s/he is responsible for the damage and even when it is obvious that the employee has nothing to do with the loss suffered by the employer. This is direct exploitation of the employee by the employer. The country's difficult socio-economic situation in which almost half the population is unemployed, and adds pressure for employees to consent to employers’ demands for fear of losing their job.
Republika Srpska

As in the old Law, the employee is held liable for breaching work obligations, and if material damage is caused to the employer or a third party, the employee is liable both financially and legally.

Any behaviour at work or in relation to work that causes serious damage to the interests of the employer as well as behaviour on the grounds of which it is deemed impossible to continue working with the same employer shall be considered as serious misconduct. Unlike the previous Law, the new Law generalizes the notion of a grave breach of work obligations. It also specifies measures the employer can undertake against an employee who committed a serious breach of work obligations and discipline. These are: a written reprimand, a fine and termination of contract. Termination of contract cannot be done for minor misconduct. There are no provisions on disciplinary procedure.

The new Law also specifies the possibility for removing the employee from place of duty if s/he is caught in activities for which there is reasonable doubt that they are criminal, or represent grave breaching of work obligations or cause damage to valuable property. The employer can remove the employee from place of duty even before terminating the contract. The notion of reasonable doubt is not clearly defined, so the employer is the one who has the freedom to assess whether reasonable grounds exist or not. The Law regulates payment of damages in the same way as previous legislation: the employee who, at work or in relation to work, deliberately or due to gross negligence causes material damage to the employer shall compensate the employer for the damage. As for payment of damage not regulated by this law, the provisions concerning contractual relations shall apply.

7. TERMINATION OF LABOUR CONTRACT, WELFARE PROGRAM FOR REDUNTANT EMPLOYEES AND TRANSFER OF EMPLOYMENT CONTRACT

Federation of Bosnia and Herzegovina

The FBiH Labour Law stipulates grounds for termination of contract\textsuperscript{17}. There have been some changes and amendments in relation to previous legal solutions and these go against the

\textsuperscript{17} Article 94 of the FBiH Labour Law
interest of employees. The previous provision that a contract may be terminated when the employee reaches 65 years of age and 20 years of pensionable service, that is 40 years of pensionable service, unless otherwise agreed upon between the employer and employee, is split into two parts in the new Law. The first part retains the previous legal solution, but the second part is amended and now stipulates that a contract expires when it is determined based on records that the employee worked for 40 years, unless otherwise agreed upon between the employer and the employee. This provision could cause problems in practice because it remains vague and unclear as to what records are used. Another problem is the current state of benefits payment in BiH. A huge number of employers did not pay benefits for years so once the employees are legally required to terminate their contracts they cannot exercise their rights to a pension and they may not meet the requirements for social protection benefits. This means that the employee could be left without any source of income, which would be detrimental to their welfare.

In the part regulating termination of contract due to loss of working ability, the previous Law stipulated that the employment relationship is terminated on the day when valid confirmation of the loss of working ability is delivered. According to the new Law, the employment relationship ceases on the day of delivering the decision acknowledging rights to disability pension due to loss of working abilities. The new legal solution is more favourable to the employees because it eliminates the discontinuity engendered by the previous law, particularly when it comes to exercising the right to health insurance, since previously several months could pass between the termination of contract and the recognition of the right to pension.

When it comes to the agreement between employer and employee to terminate the contract, previous solutions have been retained. When it comes to grounds and procedures for an “ordinary” termination of contract, previous solutions have been retained. The employer may terminate the contract of an employee, within the prescribed notice period, if: the termination is justified for economic, technical or organizational reasons or if the employee is not able to perform his/her duties arising from the employment relationship, or if the employer cannot be reasonably expected to assign the employee to other jobs or provide for additional training and retraining for other types of work. The new Law also contains a provision that provides additional protection for dismissed employees in cases where the circumstances that prompted the dismissal are changed. If an employer intends to employ within one year from the termination of the contract of an employee with the same
qualifications and the same academic level to the same job position, s/he shall have to offer employment to employees whose contract was terminated.

As for provisions regarding termination of contract by the employer without adhering to the obligation of notice period, solutions from the previous Law have been retained. The employer may terminate the contract without the prescribed notice period, if the employee is responsible for serious misconduct or serious breach of obligations arising from the labour contract, which are of such nature that the employer cannot be reasonably expected to continue employing the employee. In case of minor misconduct or breach of duties, the contract cannot be terminated without giving prior written warning to the employee. The warning shall contain a description of the offense or breach of duty for which the employee is deemed responsible as well as a statement on the intention to terminate the contract without the prescribed notice period if the offense is repeated within six months from when the warning was issued. This "probation period" gives the employee some security that s/he cannot be dismissed for possible breach of work obligations that may arise in a period longer than six months. The same provisions have been retained when it comes to terminating contract without the prescribed notice period.

However, deadlines for terminating contract without the prescribed notice period have been significantly extended. The employment contract may be terminated within 60 days from the day on which the fact causing the dismissal was revealed, but no longer than one year from when the breach was committed. This means that legislators have specified both the subjective and the objective deadline for this kind of dismissal. Previously, the deadline for a dismissal of this kind was uniform: 15 days from the day on which the fact causing the dismissal was revealed. The new regulation goes drastically in favour of the employer and against the interest of the employee, for the employer now has a much longer time period within which to terminate the contract for a serious breach of obligations arising from the employment contract. The extended deadline also leaves room for manipulation since it gives the employer the opportunity to keep the employee in uncertainty and under pressure due to the alleged breach of contract, which opens up space for exploitation of the employee by the employer.

When it comes to terminating the contract of a union representative, previously the Law stipulated that an employer could not terminate the contract of a union representative while s/he is performing his/her duties or six months after s/he is no longer performing this role, 

---

18 Article 89 of the previous FBiH Labour Law
without prior consent of the competent labour ministry of FBiH. The new Law extends this protection stating that the employer cannot, in any way, put the union representative in a less favourable position compared to the job s/he performed prior to assuming the duties of a union representative. This practically means that the employer can neither terminate the contract nor affect any changes to the job post the employee had before assuming the role of a union representative without the consent of the competent ministry of labour in the Federation. The new Law also defines who is considered to be a union representative\(^{19}\) and stipulates that if the competent ministry denies consent, an employer may request substituting the decision with a court ruling, within 30 days from the date when the decision was delivered.

A written notice of dismissal or a letter of resignation, together with a written justification shall be delivered to the employee. When it comes to notice periods, the new Law retains the same provisions, but it limits the duration of a notice period by specifying that a notice period cannot be longer than a month when the employee is giving a notice to the employer, and three months when the employer is giving a notice to the employee. In the new FBiH Labour Law, the legislators clearly specified unjustified grounds for dismissal: a) temporary inability to work due to illness or injury; b) filing an appeal or a complaint, e.g. participating in proceedings against the employer for a violation of law, other regulations, the collective agreement or the Rulebook; c) the employee contacting the competent persons or state administration bodies or filing a bona fide report with said persons or bodies regarding a reasonable suspicion of corruption. Practice has shown that employees’ contracts have been terminated for the above reasons when employers became aware of them.

When it comes to regulating unlawful dismissal and the rights of employees in these situations, the legislators have retained previous solutions. Article 106 of the FBiH Labour Law\(^{20}\) stipulates that, if an employee is requested by the employer to stop working before the prescribed notice period has lapsed the employer shall pay salary compensation and recognize all other rights as if the employee had worked during the entire notice period. If the court finds the dismissal to be unlawful, the employer might be obligated to: a) reinstate the employee, at his/her request, to tasks performed previously or other adequate jobs and pay compensation in the amount the employee would have received had s/he worked, as well as

---

\(^{19}\) Article 103 Paragraph (2) of the Labour Law. In terms of Paragraph 1 of the Article, a union representative shall be an employee who is the authorized representative of the trade union of the organization or company in question, in line with provisions on the organization and functioning of trade unions.

\(^{20}\) Official Gazette of FBiH no: 62/15
compensate for the damage, or b) pay the employee: salary compensation in the amount the employee would have received had s/he worked; compensation for damage suffered; severance pay the employee is entitled to in accordance with the law, the collective agreement, the Rulebook on labour or the employment contract. If an employee stops working prior to the lapse of the prescribed notice period, without the employer’s consent, the employer shall be entitled to compensation for damage in accordance with general provisions on damage compensation. An employee who is disputing the termination of the employment contract may ask the court to temporarily reinstate him/her until court proceedings are over.

As for termination of contract with the offer of a new contract under modified terms, the new Law has retained the same solution according to which provisions of the Law pertaining to dismissal shall also apply in this situation. If the employee accepts the offer of the employer, s/he reserves the right to contest the modifications made to the contract before the competent court. However, the legislators did make a step forward when it comes to protecting the rights of the employees, specifying that an employee shall decide on the offer to conclude a new contract under modified terms within the time period set by the employer, which cannot be less than eight days. Practice has shown that in situations like these the employee had to sign the modified contract right away, without having the time or the opportunity to familiarize himself/herself with the conditions, seek legal aid if necessary etc. The new Law is much more favourable to the employees in this respect.

Provisions regulating severance have remained the same in that they stipulate the same conditions for the recognition of rights and the same manner of determining the amount of severance, but the new Law limits this right by specifying that severance cannot exceed six average salaries paid to the employee in the three months preceding the termination of the contract. This provision could be misused to dismiss employees with many years of service in a “cost-effective” way.

When it comes to the welfare program for redundant employees, the previous Law stipulated that an employer with more than 15 employees who intends, in the next three months, to terminate employment contracts of at least 5 employees or more than 10% due to economic, technical or organizational reasons shall consult the Council of Employees or the union. The new Law increases the number of employees to 30. Having in mind the state of the economy in BiH and the fact that most business entities are small and medium enterprises that employ a small number of people, it becomes clear that, according to this provision, these employers are not obligated to provide a welfare program to redundant employees nor consult
the Council of Employees or the union. Provisions regarding the consultation process and the obligations arising from it have remained unchanged.

Finally, the transfer of contract in case of changes in the status of an employer has been regulated in much the same manner as in the previous Law, whereby the Law stipulates that in case of merger, acquisition, transformation of the company's legal form etc. and in case of change in the ownership of the employer's equity, all employment contracts valid on the date of the change of employer shall be transferred to the new employer (legal successor), with written consent of employees. Additionally, the new Labour Law also clearly specifies that employees whose contracts are transferred to the new employer shall retain all rights arising from the employment contract that have been acquired up until the date of transfer and that the employer/legal predecessor shall inform employees whose contracts are being transferred to the legal successor of the transfer in written form. This solves the dilemmas that used to appear in practice about the legal employment status of employees in cases of changes in the legal status of the employer, which is something employees can have no control over, as well as some ambiguities related to keeping the same level of rights arising from the employment relationship acquired up until the date of the transfer.

**Republika Srpska**

The new Law omits the provision that an employment relationship shall terminate with 40 years of service. According to Article 175, an employment relationship shall terminate: by lapse of time according to the contract, when the employee reaches 65 years of age and at least 15 years of pensionable service, by an agreement between the employer and the employee, by dismissal or resignation, by decision of the competent court, at the request of a parent or guardian of a minor employee under 18 years of age, due to death of an employee, and in other cases determined by law.

When terminating contracts by agreement, the Law stipulates that the agreement shall become a legal fact on the day when the employee's signature on the agreement is verified by the competent body of the local administration, something which the previous Law did not require. This way of terminating contracts is based on the contracting parties acting voluntarily. However, practice has shown that employees often dispute this voluntarism. For this reason the definition of terminating contracts by agreement in Article 177 of the Law is unclear, which opens the possibility for different interpretations. The Law states that the agreement shall become a legal fact on the day of verification of the employee's signature on
the agreement, meaning that only the employee but not the employer has to verify the signature. Furthermore, the deadline for signature verification is not given and the employer is not obligated to deliver a note to the employee, informing him/her of the consequences to his/her right to unemployment insurance or the right to severance pay etc.

The law provides a list of grounds for dismissal. However, the contract of an employee who violates work discipline by performing criminal activities either at work or in relation to work shall be terminated by the employer, irrespective of the whether criminal proceedings are initiated against the employee or not. In practice, this could mean that the employer’s own assessment about a certain behaviour being criminal or not might be sufficient grounds for dismissal. Such a formulation goes against the principle of the benefit of doubt, one of the cornerstones of criminal proceedings. Besides, the solution is ambiguous since Article 149 of the RS Labour Law enables temporary removal of the employee from place of duty in cases when a criminal proceeding is being initiated, and now the employer may dismiss the employee based on his/her doubt that the latter has committed a criminal act, without any decisions from any other authority.

The new Law provides a better solution in defining the procedure of protecting the rights of employees, which is carried out prior to the civil procedure. However, unclear provisions on the procedure in cases of dismissal might be a problem since under the previous Law the union played a significant role in protecting the rights of employees during a disciplinary procedure. The employee also had the opportunity to protect his/her rights with the expert help of a lawyer prior to the labour dispute. But Article 180 of the new Law stipulates that prior to dismissal, the employer shall provide the employee with written explanation of the decision, stating the grounds for dismissal, facts and evidence that show conditions for dismissal have been met and that failure of the informed employee to respond shall not impede the procedure, but the Law does not specify what this procedure is.

8. PROTECTION OF RIGHTS ARISING FROM THE EMPLOYMENT RELATIONSHIP

Federation of Bosnia and Herzegovina

When it comes to rights and obligations arising from employment, new legal solutions mostly deal with shortening deadlines for submitting the request to seek protection of rights
and tightening the conditions for seeking judicial protection of rights arising from the employment relationship. The employer or another authorized person designated by the Statute or Memorandum of Association shall decide on the rights and obligations of employees arising from the employment contract, in accordance with the law, the collective agreement and other regulations. The new Law stipulates that an employee who believes the employer violated a right arising from the employment relationship may request the employer to uphold said right within 30 days from the day of learning about the violation of the right. If the employer fails to comply to the request within 30 days from the day on which it was filed or from the day on which an agreement on peaceful dispute resolution was reached, the employee has a further period of 90 days during which s/he may file a lawsuit before the competent court. In addition to the aforementioned deadlines for submitting the request to seek protection of rights, the Law explicitly stipulates that addressing the employee within said deadlines is a necessary pre-condition for initiating a labour dispute, except in cases when the employee requests payment of damages or has another monetary claim arising from the employment relationship (all monetary claims arising from the employment relationship shall fall under the statute of limitations within 3 years from the day on which the claim was generated). Having in mind these changes introduced by the new Labour Law, as well as widespread ignorance of legal regulations among employees, it is anticipated that problems will arise in practice due to shorter deadlines within which to file the request seeking protection of rights as well as due to the imperative provision that an employee cannot file a lawsuit without previously having appealed to his/her employer with the request to protect labour rights. Previously, the Law stipulated that an employee may submit the request within a year from the day on which the decision violating his/her right was delivered, i.e. from the day of learning about the violation, while addressing the employer was not a precondition for filing a lawsuit with the competent court. Also, it is important to note that the previous Law was in force for over 16 years and so the legally prescribed deadlines were well-known. However, shortening the deadlines and introducing the requirement to address the employer first may result in employees not meeting the deadlines and obligations and therefore not having the opportunity to exercise their employment rights, especially in situations of the gravest violations of employees’ rights such as unlawful dismissal.

The previous Labour Law stipulated that parties may agree to refer their labour dispute to arbitration and that the collective agreement shall determine the structure, procedure and
other issues relevant to arbitration\textsuperscript{21}. The new Law specifies peaceful dispute resolution whereby, prior to taking legal action, the employee and the employer may agree on a peaceful resolution of the dispute in the manner and under the terms prescribed by law. However, the provision does not clarify what kind of peaceful dispute resolution this is supposed to be, nor does it specify rules, the (none) binding character of the decision etc. Still, Paragraph 2 of the same Article\textsuperscript{22} which “extends” the deadline for submitting the request for protection of rights is in principle positive. The provision states that if the procedure of peaceful dispute resolution is not completed in reasonable time which cannot be longer than 60 days, or if the reconciliation attempt fails, an employee shall be entitled to file a lawsuit with the competent court within the deadlines referred to in Article 114 of the Law, which shall start running from the day on which the reconciliation procedure was concluded. Peaceful dispute resolution would be welcome, both for the sake of maintaining good relations between the opposing parties – the employer and the employee – which are severely and permanently compromised during court proceedings, and for the sake of cost-effectiveness and efficiency of the procedure, the promptness of decision-making, and the disburdening of the courts. Practice has shown that after long labour disputes in which courts rule in favour of the employee, the latter does not wish to return to the same work environment since work relations have been completely compromised. Such situations could be avoided by peaceful dispute resolution.

\textit{Republika Srpska}

The new Law stipulates that a lawsuit for the protection of employee’s rights shall be filed within six months (at the latest) from the day of learning about the rights violation or the day of the violation. Under the previous Law, this deadline was one year. An employee who believes the employer has violated a right arising from the employment relationship may submit a request to the employer to grant him/her the enjoyment of said right. The request can be submitted within 30 days from the day of learning about the violation or three months from the day of the violation at the latest. The employer shall decide on the request within 30 days from the day of its submission, and if s/he fails to do so, the request shall be deemed accepted, as was the case under the previous Law. The employee can submit the proposal for

\textsuperscript{21} Article 104 of the Labour Law

\textsuperscript{22} Article 116 of the Labour Law
peaceful dispute resolution within 30 days from the day of learning about the violation and three months from the day of the violation at the latest. An employee can file a lawsuit if the matter was not settled through peaceful dispute resolution with the competent authority.

Independent of the procedure for rights protection initiated with his/her employer or other authorities, the employer may contact a labour inspector for protection of labour rights within one month from the day of learning about the violation, or 3 months from the day of the violation at the latest. There is clear intention on the side of the legislators to have procedures of rights protection of employees settled at court, which is implied by the significant reductions in the deadline for filing a lawsuit to protect labour rights (from one year to six months) and correspondence of legal remedies at the employee's disposal prior to initiating a court procedure.

The Law also contains new provisions regarding the legal consequences of unlawful dismissal. For example, Article 195 Paragraph 2 stipulates that if the court determines there were grounds for terminating the contract at the time of the procedure, but that the employer did not abide by the provisions which regulate the procedure for terminating the employment contract, the court shall grant the employee's request to return to work and award damages to the employee equivalent to 6 salaries of the employee.

9. PARTICIPATION OF EMPLOYEES IN DECISION-MAKING, UNIONS, COLLECTIVE AGREEMENTS AND STRIKES

Federation of Bosnia and Herzegovina

When it comes to forming Councils of Employees, the legislators have raised the threshold from 15 to a minimum of 30 employees. We should again keep in mind that most business entities are small and medium-size enterprises that hire a small number of employees, so these provisions do not apply to them. This directly endangers labour rights of employees and puts them in an inferior position in comparison to their counterparts who are employed in business entities that have Councils of Employees.

Unlike the previous Law, the new Law contains in Chapter XV provisions regulating the representativeness of unions and employers' organizations. Representativeness of trade unions or employers' organizations is determined by the federal or cantonal labour ministry in the form of a decision, after completing the procedure of determining the relevant facts. The
decision is published in the Official Gazette of FBiH. This is important because the Law prescribes the power of the trade union or the employers’ organization. They are entitled to a) represent their members before the employer, the authorities, employers' organizations, other institutions, or legal persons; b) participate in collective bargaining and conclude collective agreements; c) participate in bipartite and tripartite bodies comprising representatives of the authorities, employers' organizations and trade unions, and d) other rights in accordance with the law. All trade unions shall have the right to represent its members before the employer, in accordance with the rules on the organization and functioning of trade unions. These provisions are particularly meaningful from the point of view of social dialogue since the proliferation of trade unions and employers’ organizations has often caused difficulties in determining who can be a partner in social dialogue.

Just like the previous Law, the new Labour Law contains provisions on collective agreements, but there have been some changes regarding parties who participate in collective bargaining. The new Law stipulates that a general collective agreement shall be concluded by the representative employers' organization and the representative trade union established on the territory of FBiH. The same is true for collective bargaining for branch collective agreements and collective agreements with the employer. The second novelty regarding collective bargaining is that if consent to conclude a collective agreement is not reached within 45 days, participants may set up arbitration to resolve contested issues. The most important change in relation to previous legislation is that only fixed-term collective agreements can be concluded, for a period of no more than 3 years, and that they shall apply no longer than 90 days following the lapse of the term to which it was concluded. The previous Law did not set a time limit, so collective agreements remained in force until new agreements were concluded. As for provisions on peaceful resolution of collective labour disputes, the new Law has retained previous legal solutions.

Provisions regarding strike as a form of protecting labour rights have remained the same.

Republika Srpska

Article 1 of the new Labour Law states that, in addition to the Law, the rights, obligations and responsibilities arising from the employment relationship shall be regulated by the collective agreement and by the Rulebook and employment contract only when the Law specifies so. Article 10 of the previous Law stipulated that the collective agreement, the
Rulebook and the employment contract further defined rights arising from employment, the scope of rights and the manner and procedure for exercising them.

Under the new Law (Article 252 Paragraph 1) it is stipulated that future collective agreements shall be in force for three years following the date of conclusion and that provisions which are not in conflict with the new Law shall remain in force until new collective agreements are concluded, but no longer than three months (Article 269 Paragraph 2) from the date of entry into force of the new Law. The previous Law did not set a time limit for collective contracts. It remains to be seen what will happen if new collective agreements are not concluded. In that case, the new Law gives the employer the opportunity to regulate rights arising from the employment relationship independently, through a Rulebook. Without an organized effort to protect labour rights, employees could be subject to the approach taken by the employer.

Both the previous and the new law contain an identical provision stating that an employee can exercise his/her right to strike in accordance with the Law on Strike. Article 4 of the Law on Strike states that the decision to go on a strike or a token strike is made by the competent organ of the representative majority trade union, or more than half of the employees of the same employer. A strike organized without the aforementioned decision would be considered illegal. In practice the employees have rarely used their right to go on strike.

10. SUPERVISING THE IMPLEMENTATION OF LABOUR LEGISLATION AND PENALTY CLAUSES

Federation of Bosnia and Herzegovina

Supervising the implementation of labour legislation is the task of the federal or cantonal labour inspector. The new Labour Law defines the competence and the tasks of the federal or cantonal labour inspectorate. A general problem is the practical non-implementation of legal provisions due to inefficient supervision. Also, there is a noticeable imbalance between the real and the normative state when it comes to exercising employment rights.

It is interesting to note that in its Observations from November 25, 2005 in Recommendation 36, the Economic, Social and Cultural Rights Committee, which oversees the implementation of the International Covenant on Economic, Social and Cultural Rights in Bosnia and Herzegovina, recommended BiH ensure its labour inspectorates are well-
staffed and have enough resources to efficiently fight against the abuse of labour rights. It is debatable to what extent authorities on all levels in BiH tried to implement this recommendation.

As for penalty clauses, it must be emphasized that the new Labour Law has tightened and expanded both the definition of offenses and the sanctions. Also, for the first time, Article 170 Paragraph 4 stipulates that a person caught working without having concluded an employment contract shall also be fined in the amount ranging from 100 to 300 BAM.

Republika Srpska

The labour inspectorate still has the central role in overseeing the implementation of the law, other labour regulations as well as collective agreements and Rulebooks. Now the Law also features a provision stipulating that inspection concerning the rights, obligations and responsibilities in the administrative organs and local self-government units of Republika Srpska shall be carried out by the administrative inspection. It is noticeable that in practice the labour inspectorate does not use its powers and opportunities to the fullest extent in order to protect the rights of employees.

The new Labour Law prescribes higher penalties for employers that now range from 2,000 to 20,000 BAM, while under the previous Law they ranged from 1,000 to 5,000. However, the new Law does not feature a provision from the previous Law that enabled the labour inspectorate to suspend the activity of the employer until the court made a final decision in the legal proceedings for rights violation, in cases when the employer did not conclude a contract with the employee engaged in work activities or if s/he did not register insurance for the new employee.

APPROXIMATING LABOUR LAWS TO EU LEGISLATION AND OTHER INTERNATIONAL OBLIGATIONS

Like other countries, Bosnia and Herzegovina is subject to international law and international commitments in all areas including labour law. This is primarily related to the numerous conventions of the International Labour Organization (ILO), but also other international instruments such as the Convention on the Rights of All Migrant Workers and Members of their Families. Since the country is working towards Euro-Atlantic integrations,
legal EU instruments regulating labour law are becoming increasingly important to the labour law in Bosnia and Herzegovina.

Bosnia and Herzegovina has been a member of the International Labour Organization since 1993, and has by succession adopted a significant number of conventions and subsequently ratified a few more. All of the core eight conventions are in force in Bosnia and Herzegovina, as well fifty-six other conventions the country, i.e. its entities and Brčko District have been obligated to harmonize the relevant labour legislation with the aforementioned international instruments, and have done so to a great extent. However, the ILO Committee of Experts has repeatedly warned of the need to further harmonize labour legislation. In its comments from 2014 for example, the Committee warned of the need to adopt a list of works in which it is prohibited to employ minors as well as the need to prescribe clear sanctions for the violation of provisions of the Convention concerning Minimum Age for Admission to Employment from 1973, the latter of which has been fulfilled.

Of special importance is the issue of the approximation of BiH legislation to that of the EU. Although BiH is not an EU member state nor is it a candidate, it has signed the EU Stabilisation and Association Agreement (SAA), which came into force in mid-2015. Article 70 of SAA states that: “The Parties recognise the importance of the approximation of the existing legislation of Bosnia and Herzegovina to that of the Community and its effective implementation. Bosnia and Herzegovina shall endeavour to ensure that its existing laws and

---

23 These are the conventions: Convention concerning Forced or Compulsory Labour, 1930 (no. 29); Convention concerning Freedom of Association and Protection of the Right to Organise, 1948 (no. 87); Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949 (no. 98); Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (no. 100); Convention concerning the Abolition of Forced Labour, 1957 (no. 105); Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (no. 111); Convention concerning Discrimination in Respect of Employment and Occupation, 1973 (no. 138); Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (no. 182).


future legislation will be gradually made compatible with the Community *acquis* and that “this approximation shall start on the date of signing of this Agreement and shall gradually extend to all elements of the Community *acquis* referred to in this Agreement...” Even if one can claim that BiH is not obliged to approximate its legislation to that of the EU all at once, it is clear that BiH cannot act in opposition to the goals and the purpose of the SAA. This is clearly stated in the provisions of the Vienna Convention on the Law of Treaties (1969). Article 18 of the Convention states that a country shall refrain from acts which would defeat the object and purpose of a treaty.

According to Article 153 of the Treaty on the Functioning of the EU (previously Article 137 of the Treaty establishing the European Community) the EU shall support and complement the activities of the Member States in the following fields: improvement in particular of the working environment to protect workers' health and safety; working conditions; social security and social protection of workers; protection of workers where their employment contract is terminated; the information and consultation of workers; representation and collective defence of the interests of workers and employers, including co-determination; conditions of employment of third-country nationals legally residing in the Union Territory; the integration of persons excluded from the labour market; equality between men and women with regard to labour market opportunities and treatment at work; the combating of social exclusion; the modernisation of social protection systems.

Negotiation Chapter 19 “Social policy and employment” deals with these issues. For the sake of illustration, during its negotiations with the EU, the Republic of Croatia had to adopt or make amendments to the following laws under this Chapter: Labour Law; Law on Employment Mediation and Unemployment Rights; Law on Health Protection; Law on Pension Insurance; Law on Mandatory Social Security Coverage; Law on Ensuring Workers' Claims in Case of Employer's Bankruptcy; Law on Cooperatives; Occupational Health and Safety Law; Occupational Health and Safety Health Insurance Law; Law on Prohibition of Discrimination; Law on Gender Equality; Law on the Ombudsman; Law on the Rights of Pension Insurance for Military Personnel, Police Officers and Authorised Officials; and the Law on Family and Parental Leave.

Also, the experience of the Republic of Croatia in EU negotiations for this chapter has shown that the following Directives of the EU Parliament and Council are particularly relevant to the area of labour law:


16. Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding,


Although no specific directive deals with gathering and processing personal data of employees, directives regulating this matter in general are still relevant.

Labour Laws in both entities were adopted by quick legislative procedure, without substantive public discussion on many issues, including the approximation of the new legislation to the EU legislation. As for the new Labour Law in Republika Srpska, in the very rationale of the law – and with keeping in mind the Opinion of the Ministry for Economic Relations and Regional Cooperation no 17.03-020-3063/15 of 24/12/2015 – we find that the Law is only “partly harmonized“ with EU acquis. While writing this analysis we were unable to obtain the official rationale of the Labour Law in the Federation of Bosnia and Herzegovina, but the conclusion is probably the same. For example, the lack of harmonization is evident in the length of the annual leave, where BiH legislation is not harmonized with the minimum protection offered by the EU legislation or the deficiencies related to the transfer of business entities.

Since Bosnia and Herzegovina submitted its application to join the EU after these laws entered into force, there will be detailed analyses of how harmonized the legal system of BiH is with the relevant legislation of the Union, so we should expect further amendments to the newly adopted labour laws in the entities.
CONCLUDING REMARKS

The new labour laws in the Federation of Bosnia and Herzegovina and Republika Srpska did not bring about revolutionary changes when it comes to regulating employment and the employment relationship. The legislators transferred a good deal of previous provisions, making only minor tweaks which include shortening deadlines for: submitting the request to seek protection, responding to the requests for protection, and initiating judicial protection of labour rights.

The Law itself provides a solid normative framework. But the implementation of the Law in practice has been observed as a challenge in the past and could also be a barrier to the efficacy of the new legislation. This has resulted in a piling up of problems for which the current law offers no solutions either. The law did not introduce new legal concepts that would clarify or abolish previous practices (illegal work, annual leave, overtime work etc.). The only revolutionary change is prescribing that a 'payslip' can be used as executive writ which leaves room for hope that changes for the better will be made.

The law does not contain ideal normative solutions, but even the most perfect legal text means little if it is based simply on disposition and does not include appropriate sanctions (this is primarily related to the work of labour inspectorates).

The Labour Law in and of itself, regardless of its positive or negative sides, will not improve the material and social status of employees until it is harmonized with all other provisions regulating all of the accompanying rights (provisions on the bankruptcy and liquidation of companies, pension insurance, employment mediation, social protection regulations regarding rights arising from motherhood, other social benefits etc.).

The analysis has pointed out the inconsistency of legislators (described in detail above, through the analysis of several legal concepts) which has been confirmed by the advisability of amendments to the Labour Law that are already being prepared for adoption. New legal solutions have only just begun to be implemented and the short period of their practical application cannot be used as an indicator of the need for intervention into the existing legal framework.