

ACT ON PREVENTION OF MOBBING – POSSIBLE PROBLEMS IN IMPLEMENTATION

BELGRADE, May 28th, 2010 – Two days ago, Serbian Parliament adopted the Act on prevention of harassment at work (“RS Official Gazette” No. 36/2010), which shall come into effect on June 5th, 2010, and be applicable 90 days thereafter. The Act prohibits any kind of abuse at work and in connection with the work.

Direct participants in preparation thereof were the representatives of the social partners, representative associations of the employers and representative unions on the level of the Republic of Serbia, and since rendering of the Act had been recommended by the European Parliament, cooperation has also been made with the representatives of the associations in charge of these issues.

The principal aims of the Act - creation of a healthier and more human work environment and ensuring of better safety of the employees, will surely be achieved, however, numerous dilemmas are present as well as the issues that should be especially pointed out.

Since the abuse, subject to the Act, represents any active or passive behavior towards the employee, which is repeated and the aim of which is to ruin the dignity, reputation, personal and professional integrity, health and position of the employee, the question arises whether it could be possible to always precisely establish whether behavior of a person is the abuse. Without a precise definition, possible cases of misuse are numerous. One of the situations could be that fear and embarrassment, actually any feeling that might be defined as the abuse, might be provoked by somebody’s mild, non-malicious comment (You are in a good mood today!).

Further, the Act provides that the employer shall ensure that the employees be informed and trained to recognize the causes, forms and consequences of abuse at work. In this connection, two questions arise – what are the criteria to establish whether the employer has undertaken all steps in order to prevent the abuse and what level of protection by the employer is sufficient to protect the employer from the liability

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for the damage.

One of the Articles of the Act provides that the employee shall be obliged to, on one hand, refrain from the behavior which represents the abuse, but also to refrain from the behavior which represents misuse of the rights to protection against the abuse. Should the employee fail to observe the above, he/she will be liable for failure to observe the work discipline and violation of the work duty. What will happen if the employee does not refrain from such behavior or if he/she misuses the rights to protection from the abuse? The Act provides that misuse of the rights to protection against the abuse is exercised by the employee who is aware that there are no grounded reasons for initiation of the protection procedure, but nevertheless initiates the procedure with the aim to endure, for himself/herself or some other person, material or non-material benefits, or to create damage to another person. Considering that, the question is whether and how such intention or aim can be proved, and whether, should it not be proved, such employee would not have to deal with the consequences? On the other hand, the employer would have to compensate the damage anyway.

Also, the employer shall be obliged to, in cases where there is grounded doubt that the abuse has occurred, initiate the procedure for establishing liability for failure of the employee to observe the work discipline. This may result in the employee's removal from work up to 30 days without salary compensation, permanent transfer to another work environment, to the same or different work position, and, as an ultimate measure, termination of the employee's service. However, if it is subsequently established that there has been no abuse, who will bear the costs, inclusive of the lost salary and all accompanying considerations? The employer, without any dilemma whatsoever.

The Act provides for the employee's right to refuse to work in case of the abuse. The employee whose, subject to the opinion of the work medicine department, health or life are directly jeopardized, shall be entitled to refuse to work in case no measures have been undertaken against the person charged with the abuse. During the time in which the employee refuses to work for the specified reasons, the employee shall be entitled to salary compensation in the amount equal to the average amount of the last three salaries. Without contesting the opinion of the work medicine department, if the employee does have health problems, the question arises to what extent the reasons are objective (actual disease, genetic factors, adjustment problems, etc.), and where the reason lies in actual abuse. To be more specific, an unimportant comment, for someone might be the reason for health condition aggravation, and in such case it could be said that the aggravation has been caused by the abuse.

Assuming that the employee has managed to make it probable that the abuse had occurred, the employer shall be obliged to, in the Court proceedings, prove that no abuse had occurred. Again, we are on the sensitive ground. In what way will the employee make it probable? On the other hand, the employer will in any way have to prove that the abuse has not occurred.

Future practice of the governmental authorities, especially the Courts, will show to what extent the intention to protect the employees has been materialized, and to what extent the new obligations have been imposed to the employers.

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