

**NACRT ZAKONA O ŠTRAJKU U FAZI
JAVNE RASPRAVE****10 ključnih novina predviđenih
nacrtom Zakona o štrajku**

U organizaciji Ministarstva za rad, zapošljavanje, boračka i socijalna pitanja predstavljen je nacrt Zakona o štrajku (u daljem tekstu: „*Nacrt*“), koji bi zamenio važeći Zakon o štrajku iz 1996. godine (u daljem tekstu: „*Zakon*“).

Usled promene u definisanju prava na štrajk po Ustavu Republike Srbije iz 2006. godine, te usled reforme radnog zakonodavstva, kao i zbog postojanja posebnih zakona kojima se, između ostalog, reguliše pravo na štrajk, javila se potreba za donošenjem novog Zakona o štrajku.

Drugi, ali ne manje važan razlog donošenja novog Zakona o štrajku proističe iz obaveze Srbije da pravo na štrajk bude usklađeno sa stavovima i principima Međunarodne organizacije rada i standardima Evropske unije.

U Nacrtu, štrajk se definiše kao prekid rada koji organizuje sindikat ili većina zaposlenih kod poslodavca, ili u organizacionom delu poslodavca radi ostvarivanja i zaštite njihovih ekonomskih, socijalnih i profesionalnih interesa i prava iz radnog odnosa.

Deset ključnih novina koje predviđa Nacrt su:

1. Minimum procesa rada utvrđuje se kolektivnim ugovorom. - Trenutno važećim Zakonom je propisano da poslodavac određuje minimum procesa rada, dok je Nacrtom predviđeno da se minimum procesa rada utvrđuje kolektivnim ugovorom. Pritom, ukoliko kolektivni ugovor ne postoji, poslodavac i sindikat, odnosno većina zaposlenih, sporazumno utvrđuju minimum procesa rada u roku od 15 dana od podnošenja predloga jedne strane. U slučaju da se ovaj sporazum ne postigne, poslodavac i sindikat su dužni da odmah pokrenu postupak mirnog rešavanja spora pred Agencijom za mirno rešavanje radnih sporova (u daljem tekstu: „*Agencija*“) koja donosi odluku u roku od 30 dana od dana pokretanja postupka.

**THE DRAFT OF THE LAW ON STRIKE IN
THE PUBLIC DEBATE STAGE****10 key novelties under the
Draft of the Law on Strike**

The Ministry of Labour, Employment, Veterans and Social Affairs has presented the draft of the Law on Strike (hereinafter: the “*Draft Law*”), which should substitute current Law on Strike from 1996 (hereinafter: the “*Law*”).

The need for change of the legislation related to the right to strike occurred due to the change in the definition of the right to strike in the Constitution of the Republic of Serbia from 2006, the reform of labour legislation, as well as due to the existence of special laws which, inter alia, regulate right to strike.

Another, but not less important reason for the adoption of the new Law on Strike comes from the Serbia's obligation to comply with the stances and principles of the International Labour Organization of European Union, as well as the standards of the European Union.

In the Draft Law the strike is defined as interruption of work organized by the trade union or by the majority of the employees employed at the employer, or in organizational unit of employer in order to protect their economic, social and professional interests and rights from the employment agreements.

Ten key novelties which the Draft Law introduces are:

1. Minimum working process is determined by collective agreement. – The Law prescribes that employer determines minimum working process, while the Draft Law prescribes that minimum working process is determined under the collective agreement. Moreover, if a collective agreement does not exist, the employer and the trade union, or the majority of employees, consensually set up minimum working process within 15 days from the filing of a proposal by one party. In case there is no such agreement, an employer and the trade union are obliged to immediately initiate the process of peaceful settlement before the Republic Agency for Peaceful Settlement of Labour Disputes (hereinafter: the “*Agency*”) that issues a decision within 30 days from the date of initiation of the procedure.



2. Poslodavac ne može da obaveže članove štrajkačkog odbora da obezbeđuju minimum procesa rada, bez saglasnosti štrajkačkog odbora.
3. Štrajk je zabranjen pripadnicima Bezbednosno-informativne agencije, u zdravstvenim službama koje pružaju hitnu medicinsku pomoć, u kontroli letenja, pripadnicima specijalne i posebnih jedinica policije i u slučajevima propisanim Zakonom o policiji. - Važeći Zakon zabranjuje štrajk samo profesionalnim vojnicima.
4. Poslodavac ima pravo na naknadu štete u slučaju nezakonitog organizovanja i učešća u štrajku. – Iako je ova odredba uneta u Nacrt ostaju sporna mnoga pitanja u vezi sa naknadom štete na koju poslodavac ima u ovom slučaju (npr. od koga poslodavac ima pravo na naknadu štete).
5. Obaveza vođenja evidencija o štrajku. – U skladu sa Nacrtom, Agencija je dužna da vodi evidenciju o štrajku koja sadrži podatke o: poslodavcu, vrsti štrajka, broju organizovanih štrajkova, zahtevima učesnika u štrajku, vremenu trajanja štrajka, mestu održavanja i načinu prestanka štrajka, dok Zakon nije propisivao vođenje ove evidencije.
6. Odluku o stupanju u štrajk kod poslodavca, štrajkački odbor dostavlja poslodavcu, najkasnije tri radna dana pre dana određenog za početak štrajka, dok je u slučaju granskog štrajka, štrajka za autonomnu pokrajinu i jedinicu lokalne samouprave rok pet dana. – Zakonom je propisan jedinstven rok pet dana, dok je rok od 10 dana u delatnostima od opšteg interesa isti i u Zakonu i u Nacrtu.
7. Nacrtom je regulisan štrajk solidarnosti (podrške). Naime, štrajk solidarnosti se organizuje radi podrške zaposlenima ili sindikatima koji su već u štrajku kod istog poslodavca, u istoj grani, grupi ili delatnosti ili na teritoriji iste jedinice teritorijalne autonomije ili lokalne samouprave, u trajanju od najduže jedan dan. U ovom slučaju odluka o stupanju u štrajk solidarnosti se dostavlja poslodavcu, udruženju poslodavaca ili osnivaču odnosno organu državne uprave najkasnije dva radna dana pre dana određenog za početak štrajka solidarnosti.
2. Employer cannot commit the members of the strike committee for maintenance of a minimum working process, without consent of the strike committee.
3. Strike is prohibited for members of the Security Information Agency, in health services that provide emergency medical assistance, in flight control, for members of special police units and in cases prescribed by the Law on Police. - The applicable Law forbids the strike only to professional soldiers.
4. Employer is entitled for damage in case of unlawful organization and participation in strike. – Although this provision is entered into the Draft Law there are many issues about damage in this case (for example, from whom the employer is entitled to request compensation of damage).
5. Obligation of keeping records about the strike. – Accordance to the Draft Law, the Agency is obligated to keep record of strike, containing information about: the employer, the type of the strike, the number of organized strikes, the demands of participants in the strike, duration of strike, the place of strike and the way of ending strike, while the Law doesn't prescribe obligation of keeping this record.
6. The strike committee delivers to employer decision to start the strike at an employer at least 3 working days before the strike starts, while in case of branch strike, strike for autonomous province and units of local and regional self-government 5-days' term is prescribed. – The Law prescribes general 5-days' term, while the 10-days' term prescribed for the activities of general interest is identical in the Law and in the Draft Law.
7. The Draft Law regulates solidarity strike (support). Namely, the solidarity strike is organized in order to support the employees or the trade unions that are already in strike at the same employer, in the same branch, group or activity or in the unit of territorial autonomy or local self-government, in duration of maximum one day. In this case the decision to start the strike is delivered to the employer, the association of employers or to the founder and/or to the state administration body at least 2 working days before the day determined for the beginning of a solidarity strike.



8. Nacrtom su regulisani posebni osnovi kada zaposlenom može prestati radni odnos kao posledica organizovanja i učešća u štrajku, i to:

- a. ukoliko zaposleni koji je određen da radi zbog obezbeđivanja minimuma procesa rada odbije da radi,
- b. ukoliko zaposleni organizuje ili učestvuje u štrajku kojim se ugrožava bezbednost i zdravlje lica, vrši nanošenje štete na sredstvima rada i opremi,
- c. ukoliko zaposleni učestvuje u nezakonitom štrajku, čija je nezakonitost utvrđena odlukom suda,
- d. ukoliko zaposleni organizuje i učestvuje u štrajku u delatnostima u kojima je štrajk zabranjen.

Nacrtom je regulisano i da poslodavac ne može da otkáže ugovor o radu u slučaju iz b) i c) pre donošenja pravnosnažne odluke suda.

Za razliku od pravila iz Nacrta, Zakonom nisu propisani posebni razlozi kada se zaposlenom može dati otkaz, osim što sadrži generalnu odredbu da se zaposlenom može otkazati ugovor o radu ukoliko štrajk nije organizovan u skladu sa Zakonom.

9. Nacrtom je precizirano da zaposleni koji učestvuju u štrajku nemaju pravo na naknadu troškova.

10. Učesnici u zaključivanju kolektivnog ugovora u delatnostima od opšteg interesa dužni su da najkasnije u roku od 30 dana od dana stupanja na snagu novog zakona započnu pregovore u dobroj veri za utvrđivanje minimuma procesa rada, osim u slučajevima kada je minimum procesa rada propisan zakonom.

Konačno, napominjemo da za sada nema konsenzusa o pravu poslodavca da privremeno zatvori kompaniju i na taj način spreči gubitak prouzrokovan prekidom rada (*tzv. lokaut*).

8. The Draft Law prescribes specific grounds when employment can be terminated as a result of organization and participation in the strike, as follows:

- a. if an employee, determined to work in order to ensure a minimum working process, refuses to work,
- b. if an employee organizes or participates in strike jeopardizing security and health of citizens, causing damage to the means of work and equipment,
- c. if an employee participates in unlawful strike, which unlawfulness is determined by the decision of the court,
- d. if an employee organizes and participates in strike in activity in which strike is forbidden.

The Draft Law regulates that an employer is not entitled to terminate employment agreement in case b) and c) above before the final decision of the court is adopted.

Unlike the rules from the Draft Law, the Law doesn't prescribe special grounds when an employer is entitled to terminate an employment agreement. The Law prescribes, by the general rule, that the employment agreement can be terminated if a strike is not organized in accordance with the Law.

9. The Draft Law specifies that participants in a strike are not entitled to reimbursement of costs.

10. Participants in the process of conclusion of collective agreements in the areas of general interest are obliged, within 30 days from the day the new Law on Strike came into effect, to initiate negotiation in good faith for determination of the minimum working process, except in cases when minimum working process is prescribed by the law.

Finally, please note that there is no consensus about right of an employer to temporarily close the company and thus prevent loss caused by interruption of the work (*so-called lock-out*).

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