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Croatia

EMPLOYMENT AND LABOUR LAW

Contributor

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This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in Croatia.

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CROATIA

EMPLOYMENT AND LABOUR LAW



1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

An employer always needs to have a lawful reason to terminate an employment relationship. Under the Croatian Labour Law Act (LLA), there are two ways for an employer to lawfully terminate the employment relationship:

- i. Regular notice of termination
 - Business-conditioned termination due to economic, technological or organizational reasons.
 - Termination on personal grounds when the worker is unable to offer satisfactory work performance due to his specific permanent characteristics or capacities.
 - Termination due to worker's misconduct.
 - Termination due to incompetence during probationary period.
- ii. Extraordinary notice of termination.

The employer has a just cause to terminate permanent or temporal employment contracts without observing the notice period if due to a severe breach of obligations from the employment relationship the continuation of the employment relationship is not possible.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

Collective redundancy of workers is applied. The employer who expects to have 20 or more redundancies in a 90-day period, out of which at least 5 employment contracts would be terminated because of business

conditions, is obliged to consult with the works council and notify the competent public authority responsible for employment about said consultations.

During a 30-day period the competent public authority responsible for employment may request the employer to postpone either collective or individual redundancies for a maximum of 30 days if the employer is able to ensure continuation of employment for the workers during this extended period.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

The LLA does not explicitly refer to a termination of contract in the process of a business sale but prescribes the way in which the employment contracts are transferred to the new employer, so that all the workers affected by the transfer retain all the rights arising from the employment relationship they had acquired until the transfer date. The new employer, likewise, assumes all rights and obligations arising from the transferred employment contracts in unaltered form and scope as of the transfer date.

4. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

The minimum notice period is strictly prescribed by the LLA and depends on the duration of the employment relationship with the same employer as follows:

1. two weeks, for less than one year of employment
2. one month, for one year of employment
3. one month and two weeks, for two years of

employment

4. two months, for five years of employment
5. two months and two weeks, for ten years of employment
6. three months, for twenty years of employment.

For a worker with twenty years of employment with the same employer, the aforementioned period of notice is increased by two weeks if the worker has reached the age of 50 or by one month if the worker has reached the age of 55.

If the employment contract is terminated for breach of obligations arising from the employment relationship (termination due to worker's misconduct) the respective notice period is two times shorter.

The employee who, at the time of termination of the employment contract, has reached the age of 65 and has 15 years of pensionable service does not exercise the right to a notice period.

5. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

Croatian law does not recognize the possibility of payment of monies to a worker to end the employment relationship instead of giving notice.

The existence and expiration of a notice period for the termination of an employment relationship is an ex lege requirement for the lawfulness of termination in all cases, with the exception of extraordinary notice of termination.

6. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?

The employer may require a worker to be on "garden leave".

In such cases, the employer must pay wage compensation to the worker and recognize all other employment rights as if the worker worked until the end of the notice period.

The "garden leave" must be agreed upon in writing, either in the notice of termination or in a separate decision.

7. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

The notice of termination must be in writing and explained, as well as served to the worker. If there is an established works council, it must be informed about the intent of termination. The works council is obliged to issue a standpoint regarding the employer's decision of termination within 8 days, or 5 days in case of extraordinary termination.

If the works council does not revert to the employer, it is considered that they do not have any objections or suggestions.

All other procedures for achieving effective termination of the employment relationship depend on the reason of termination.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

If the employer does not follow the procedure regarding termination, the termination will be considered null and void.

9. How, if at all, are collective agreements relevant to the termination of employment?

Collective agreements may be signed on different levels and there are collective agreements on the level of an individual employer or one or more business sectors.

A collective agreement is applied directly and compulsorily to the parties who have concluded it, and to all third parties such as workers working for the employer bound with the provisions of the collective agreement.

A collective agreement may regulate matters such as the conclusion, content and termination of the employment relationship, social security, wage, working hours and protection from discrimination.

10. Does the employer have to obtain the

permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

The employer is obliged to obtain approval from the works council when termination is planned for the following workers:

- a member of the works council,
- a candidate for the works council who was not elected, during a period of three months after election results,
- a worker who has diminished or no working capacity due to a work-related injury or professional illness,
- a worker over 60 years of age, except for the termination of the worker who has reached the age of 65 and has 15 years of pensionable service,
- a workers' representative in an employer's body,
- a worker terminated for collective redundancy reasons.

If the above requirement is breached, the termination will be considered null and void.

11. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

Croatian labour law prescribes two tiers of protection mechanisms for protection of workers from discrimination and/or harassment in respect of termination of employment: (i) the employer's internal and (ii) court protection mechanism.

Ad (i).- Internal protection mechanism.

The Employer must internally consider and decide on the workers' complaints related to discrimination and/or harassment.

Employers who employ less than 20 workers are not obliged to appoint a designated authorized person for dealing with complaints related to discrimination or harassment. However, at least one designated person is usually appointed. If the designated person is not appointed, and the employer is a limited liability company or a joint stock company, complaints should be dealt with by the companies authorized legal representative (usually a Member of the Board). If the

employer is a craft, the owner of the craft should deal with the complaints.

The employer with 20 or more workers is obliged, to appoint at least one other designated person for dealing with the complaints, and the employer with 75 or more workers is obliged to appoint at least two other designated persons of different genders.

The complaints must be considered within 8 days of receipt of the complaint and all appropriate measures for prevention must be undertaken. Otherwise, the worker is entitled to stop working until his protection is secured under the condition that the claim is filed with the competent court within 8 days. Workers are entitled to wage during the time they are not working for the above reasons.

Ad (ii).- Court protection mechanism.

In cases when the worker does not expect the employer to comply with his request for the protection of dignity, he may file a claim against the employer directly to the court. The behavior of other workers may also represent discrimination or harassment and is considered a breach of employment obligations as such.

The Anti-Discrimination Act provides protection from discrimination based on race, ethnicity or skin color, sex, language, faith, political or other views, national or social origin, financial status, syndicate membership, education, social position, age, health condition, disability, gender identity or sexual orientation.

Croatian labour law states that any direct or indirect discrimination in the area of labour and working conditions is prohibited, including the selection criteria and requirements for employment, advance in employment, professional guidance, education, training, and retraining, in accordance with the LLA and special laws and regulations, such as the Anti- Discrimination Act.

12. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

Victims of discrimination are entitled to reinstatement and damage compensation from the employer.

When the court finds that a termination was not lawful, the affected worker might be reinstated. If the worker finds the reinstatement unacceptable, the date of termination of employment shall be determined and the worker may be awarded indemnity in an amount not less

than three and not more than eight statutory or contracted average monthly salaries paid to the worker over the preceding three months.

13. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

Temporal employment contracts may be terminated only if that option is provided by the contract.

An employment contract may not be terminated during a person’s pregnancy, maternity, parental or adoption leave, paternity leave, periods of part-time work, periods of short-time work due to intensified childcare, the leave of pregnant women or breastfeeding mothers, and the periods of leave or short-time work for reasons of caring for a child with serious developmental disabilities, and within fifteen days after the end of such rights. Such termination is considered null and void.

It is not possible to terminate the contract of a worker who is temporarily incapacitated for work due to medical treatment or recovery from a work-related injury or a professional illness. Such termination is considered null and void.

14. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

On 23 April 2022 the new Whistleblowers Protection Act (WPA) entered into force. The WPA regulates the reporting of irregularities, the procedure for reporting irregularities, the rights of whistleblowers, the obligations of public authorities and legal and natural persons in relation to reporting irregularities, as well as other issues important for reporting irregularities and protecting whistleblowers.

The WPA prescribes that an employer must not retaliate, attempt to retaliate, or threaten to retaliate against the whistleblower, related persons, confidential persons and their deputy for reporting irregularities or public disclosure.

Pursuant to the WPA, “retaliation” is defined as “any direct or indirect action or omission in the work environment prompted by an internal or external

reporting or public disclosure that causes or may cause undue harm” to the whistleblower.

The termination of employment contract and placing a whistleblower in an unfavorable position are particularly listed as the actions that are considered as retaliation.

Among others, the whistleblowers have the right to protection of identity and confidentiality, court protection, indemnity of damage, primary free legal aid in accordance with the law regulating the right to free legal aid, emotional support.

The whistleblowers have the right to protection if they had a justified reason to believe that the reported or publicly disclosed information about irregularities was true at the time of reporting or disclosure, and if they filed a report in accordance with the WPA on the system of internal or external reporting of irregularities or publicly disclosed the irregularity.

The court protection of whistleblowers is achieved in special litigation court proceedings initiated by a writ for the protection of whistleblowers. The whistleblower may request that the court: (1.) determines that retaliation was taken against the whistleblower, (2.) forbids taking and repeating retaliation and to rectify its consequences towards the whistleblower, (3.) awards damages caused by a violation of the whistleblowers rights, (4.) orders the publication of the judgment determining that the whistleblowers rights have been violated, at the expense of the defendant.

The whistleblower is due to make probable that he filed a report or publicly disclosed information on irregularities and consequently suffered damage. In that case, it is presumed that the damage resulted from retaliation and the person that allegedly retaliated must prove that his or her actions or omissions were based on justified reasons.

However, the WPA does not explicitly prescribe sanctions for employers who place whistleblowers in an unfavorable position. Fines are only prescribed for employers who prevent the reporting of irregularities, initiate malicious proceedings against the whistleblower, disclose the identity of the whistleblower or the reported person without consent, take revenge, try to take revenge or threaten revenge against the whistleblower for reporting irregularities or public disclosure, fails to protect the whistleblower from retaliation and does not take the necessary measures in order to stop revenge and rectify its consequences etc. The prescribed fines range from EUR 1.330,00 to EUR 6.640,00 for employers who are legal persons and EUR 400,00 to EUR 3.985,00 for employers who are natural persons.

15. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

The employer can lawfully terminate an employee's contract of employment and offer re-engagement on new less favorable terms. In Croatian law this is known as "termination of the employment contract with the offer of an amended contract". In practice, employers most often use this option when, due to economic, technical, or organizational reasons, there is a need for changes in business (lower salary, another job, another place of work, other working hours, or a different schedule of working hours).

It can also be applied when the employee commits a violation of work obligations or the employer is dissatisfied with the quality of the employee's work, which is why, according to the employer's assessment, that employee can no longer perform the tasks of the previous workplace, but could perform the tasks of another, less demanding or less responsible workplace.

16. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions?

The use of artificial intelligence in employment in the Republic of Croatia is still in its infancy and is not specifically regulated by law. From our standpoint, using artificial intelligence in recruitment or termination decisions might inherently present the following risks:

- reproduction of racist, sexist or some other prejudice,
- lack of empathy and contextual understanding,
- lack of judgment,
- manipulation by potential candidates by inserting keywords into their resume which make them seem more qualified than they are,
- lack of authentic recruiter-candidate relationship, which is often the key reason for recruiting the candidate.

17. What financial compensation is required under law or custom to terminate the employment relationship? How is such

compensation calculated?

Croatian labour law does not prescribe the payment of financial compensation as a requirement for the termination of the employment relationship. However, workers whose employment contracts have been terminated are entitled to severance pay under certain conditions.

In Croatian law severance pay is a sum of money whose purpose is to ensure income and mitigate the adverse consequences of termination. The employer is due to pay severance if the employment contract is terminated after at least two years of continuous employment, provided that it is "No Fault Termination" and that the worker is not 65 years old and has 15 years of pensionable service.

The amount of severance pay is determined with regard to the length of the previous continuous employment relationship with that employer. Severance pay cannot be less than 1/3 of the average monthly salary earned by the worker in the three months prior to termination of for each full year of employment with that employer. The total amount of the severance pay cannot exceed six average monthly wages earned by the worker in the three months prior to termination.

The law, collective agreement, working regulations or employment contract may provide for higher amounts of severance pay.

18. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

Croatian law does not provide for the possibility of worker and employer reaching agreement in such a way that the worker waives his rights in return for a payment, in case of termination of employment.

19. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

A non-compete clause is subject to a contractual agreement between the employer and the worker during

which the worker is not allowed to take employment with the employer's market competitor or to enter into business transactions regarded as competition to the employer, on his account or on the account of third parties.

Such contract may not be concluded for a period exceeding two years after the date of termination of the employment relationship. It may be an integral part of the employment contract and it must be concluded in writing.

It is important to mention that the contractual ban of competition is binding on the worker only when the employer is contractually committed to compensate the worker for the duration of the ban in the amount of at least a half of average salary paid to the worker in the three-month period preceding the termination of the employment contract.

When the worker terminates the employment contract by means of extraordinary notice for reasons of employer's serious breach of contractual obligations, the non-compete clause ceases to apply to the worker who within a month after the termination of the employment contract gives a written statement that he does not consider himself bound by this contract.

The non-compete clause ceases to apply if the employer terminates the employment contract without just cause, unless the employer notifies the worker within fifteen days of the termination of the contract that he shall compensate the worker for the duration of the contractual ban of competition.

20. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Confidential information is subject to confidentiality agreements between the employer and worker. Such information may be defined by law, other regulation, or an act of the employer.

The worker's obligation to keep information relating to the employer confidential may also be stipulated in the employment contract or a by a separate confidentiality agreement.

Disclosure and unauthorized obtainment of a business secret is a criminal offence for which a punishment by imprisonment not exceeding three years is prescribed.

However, according to the WPA, reporting irregularities is not considered a violation of business secrecy.

21. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

Croatian labour law does not provide for the obligation of employers to provide references for workers to new employers if requested.

22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

It can be said that Croatian law and court practice are generally more inclined to workers than employers.

Since court practice is more favorable for the workers, the courts often determine terminations to be null and void. Employers must therefore be very cautious when providing lawful reasons for termination.

Another potential difficulty is the service of the termination notice.

Failure to serve the notice of termination is considered to be a most serious misdemeanor offence and entails a fine in an amount ranging from EUR 4.000,00 to 8.000,00.

A more substantial problem in that regard is that if the notice of termination is not handed over to the worker, either directly or by post, the notice of termination produces no legal effects.

Workers who are aware of an impending notice of termination may therefore misuse this legal provision and intentionally avoid being served, either by refusing to sign a document proving that the notice of termination was handed over to them, or by refusing to accept any incoming post.

Changes to the current legal provisions should be made in order to mitigate these difficulties and ensure the validity of the notice of termination after a certain period if it is obvious that the worker is intentionally refusing to be served.

23. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what

impact you foresee from such changes and how employers can prepare for them?

On 1 January 2023 the new Croatian Labor Law Act (LLA) entered into force. The most significant amendments concern the prevention of fixed-term employment in unjustified circumstances, permanent seasonal

employment, remote work and working from home.

In terms of termination, the most significant amendment concerns the right to a notice period and severance pay for workers who meet the conditions for retirement (65 years of age and 15 years of pensionable service) with the purpose of encouraging employers to keep such workers in employment.

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