

2022/4

REVUE DE DROIT COMPARÉ DU TRAVAIL ET DE LA SÉCURITÉ SOCIALE

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2022/4

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**INTERNATIONAL
LEGAL NEWS**



LEGAL FRAMEWORK FOR TRAINEESHIPS IN THE REPUBLIC OF SERBIA

The current regulations on employment and education in the Republic of Serbia do not sufficiently take into account the need to provide assistance to young people in their transition from education to the world of work¹.

Also, there are no close ties between the education policy and employment policy, in terms of gradual development of skills that are crucial for youth employability, although in the last few years, laws have been adopted that regulate the organization of practical classes and internships conducted either at the employers or, as a combined approach, both in high schools and at the employers². Student internships organized by faculties under the auspices of bachelor's and master's degree programs have also been regulated³, as well as internships with employers carried out by the recognized institutions for adult education⁴.

On the other hand, options for gaining work experience, practical knowledge and skills outside of the curriculum have been established by the apprenticeship regulations, which require a special type of employment contract, as well as the vocational training regulations, which do not require entering into employment relationships. In the aforementioned latter cases, internship represents a requirement for certain occupations, i.e. a condition to take the state professional exam.

Finally, certain internship programs are organized by the National Employment Service, for persons who are on the register of unemployed persons and are covered

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- 1 The position of young people in the Serbian labour market is characterized by a slow transition from the world of education to the world of work, as it takes young people in Serbia four times longer to find their first job out of school, compared to young people in the European Union. This is accompanied by an unemployment rate higher than the employment rate for persons aged 15 to 24 (in 2020, the youth unemployment rate was 26.6%, while the employment rate was 20.8%). There is also a relatively low level of youth activity in the labour market (in 2020, only 28.3% of young people were active). Young people who are not in employment, education or training (NEET) are emerging as a particularly vulnerable group in the labour market. In the year before the outbreak of Covid-19, these individuals accounted for 15.3% of the total youth population, and not changing their status for long periods of time. According to: J. Zarkovic, D. Aleksic, *Ex ante analysis of the need for regulation of traineeships in Serbia*, Belgrade, 2021.
 - 2 Dual education law (*Official Gazette RS*, no. 101/17 and 6/20); Law on secondary education (*Official Gazette RS*, no. 55/13, 101/17, 27/18, 6/20 and 52/21).
 - 3 Law on higher education (*Official Gazette RS*, no. 88/17, 73/18, 27/18, 67/19, 6/20, 11/21 and 67/21); Law on the dual model of studies in higher education (*Official Gazette RS*, no. 66/19).
 - 4 Adult education law (*Official Gazette RS*, no. 55/13, 88/17, 27/18 and 6/20).

by active employment policy measures. In addition to the cited legal instruments, a volunteering contract is often used as a legal basis for internships, although it is thought of as a controversial approach from the point of view of the basic values and goals of volunteering.

Largely because volunteering means performing activities of general interest, for the common good or for the good of others, which is why using volunteering contracts as legal basis for internships represents misuse of volunteering.

Finally, there are *open market traineeships* in the Republic of Serbia that are not regulated by law and are carried out without direct participation and/or control of the educational institutions and thus without their responsibility for the content of the training or working conditions for the trainees.

The proliferation of the legal basis for recruitment of youth and their high unemployment rate, lower the quality of their employment. This creates two parallel worlds for young workers in the labour market, whereby workers who gain work experience as non registered workers are provided very modest protection or no protection at all, while young people who are lucky enough to establish employment enjoy a full catalogue of rights.

In order to regulate open market traineeships, and meet the need of the trainees for legal security and protection against exploitation, the Ministry of Labour of the Republic of Serbia drafted the Traineeship Law in November 2021⁵. The starting point for the proposed regulations was Council Recommendation (EU) of 10 March 2014 on a Quality Framework for Traineeships⁶.

The scope of application of the future law is very broad, considering that a trainee can be anyone over 15 and less than 30 years of age who has acquired at least primary education, has not gained work experience in the profession for which the traineeship is conducted, isn't an employee and does not draw a pension.

Authors of the Draft Law focused on young workers, as their fragile position is shaped by factors such as lack of experience, practical knowledge and skills that are crucial to finding and maintaining employment, all factors that discourage employers from hiring young people, while also putting them in a vicious circle where they can't get a job due to lack of experience, and can't get experience as it is often an important requirement in getting a job.

The personal scope of the future law shall not cover members of other age groups, in addition to young people, although there is a need to take into account the accelerated dynamics of new occupations, as well as the labour market situation, where the elderly make up the majority of the long term unemployed in the Republic of Serbia.

The Draft Law regulates only open market traineeships, but also applies to traineeships organized by the National Employment Service, as active employment policy measures. Following the definition of European Union law, the Draft Law defines traineeships as « activities for trainees aimed at gaining work experience, including learning and training with the employer, thus giving the trainees the opportunity to, during a limited period of time, gain skills and experience for a certain occupation in

5 Draft of Traineeship Law (2021): <https://www.minrzs.gov.rs/sites/default/files/2021-12/Nacr%20zakona%20o%20radnoj%20praksi.doc>

6 Official Journal C 88, 27 March 2014, p. 1.

order to improve their employability, i.e. create opportunities for employment and self-employment ».

In accordance with the principle of transparency, the Draft confirms the obligation of the employer to announce the traineeship, while the legal basis for the traineeship is provided in the traineeship agreement, which does not create an employment relationship. The agreement is entered into for the period required to achieve the goals of learning and training, but no longer than six months, with the possibility of extending the duration of the agreement if the trainee is justifiably prevented from working as well as if employer's operations are interrupted through no fault of the trainee.

Traineeships should enable employees to gain experience, soft and other skills and income, while enabling the employer to meet potential future associates. In practice, however, deviations from the stated goals can occur, especially with the employers trying to reduce labour costs and avoid labour law, social law and tax law regulations by trying to meet their need for workers by systematically and successively enrolling new trainees.

This may result in the replacement of existing employees with unpaid trainees, as well as in lower pay for existing employees, thus creating unfair competition. Some employers use the subsidized work of the trainees as an instrument to provide access to cheap labour, which is why even young workers who are covered by state assistance programs for youth employment, often have no prospect of continuing to work for the employer after the period of financial support for their wages and social security has ended.

This situation is also facilitated by the idea that it is acceptable to perform unpaid work to gain experience. In order to prevent this, the Draft Law introduced several restrictions for organizing and carrying out traineeships.

In the spirit of the principle of primacy of facts confirmed by the ILO Employment Relationship Recommendation, 2006 (No. 198), the first restriction is reflected in the rule that traineeship cannot be carried out on the basis of a traineeship agreement if there are actual elements of employment in the relationship between the trainee and the employer. The next restriction is that an employer can enter into a traineeship agreement with the same person only once.

Draft Law also limits the number of trainees that employers can engage, depending on employer size (i.e. depending on the total number of their employees). In order to further prevent the use of traineeships to ensure cheap labour, the Draft Law stipulates that a trainee cannot be enlisted to perform a specific job in case of increased workload, nor can he/she be commissioned as a replacement for an employee who is temporarily absent due to illness, injury or maternity, or family duties. Also, employers cannot organize traineeships for jobs in which they fired employees in the previous three months due to technological, economic or organizational changes.

Finally, after expiration of the traineeship agreement, an employer may enter into a new traineeship agreement with another trainee for the same position only upon expiration of the period corresponding to 1/2 of the traineeship period from the previous agreement.

The Draft Law also takes into account that low quality of traineeships is a problem, since many trainees are required only to perform simpler tasks that do not result in intensive learning or acquiring of special skills, effective mentoring and monitoring of their progress.

More precisely, there is a risk that good and meaningful learning content will not be included in the traineeship, which is why the Draft Law defines traineeships as acquiring skills and experience under the mentorship of an employer or a mentor, as a person appointed by the employer to implement the traineeship plan, through direct support and transfer of skills to the trainee. The trainee, therefore, trains in accordance with the traineeship plan made by the employer, which establishes the goals of the traineeship, tasks that will contribute to the achievement of said goals and the process of transferring skills to the trainee.

This solution was necessary, because any performance of tasks may result in the acquisition of new or improvement of existing skills, but traineeship differs from such forms of work, precisely because of the traineeship plan that is designed to achieve results related to improving the employability of trainees.

Low paying and unpaid traineeships, poor working conditions in terms of extensive working hours, exposure to health and safety risks at work, and lack of protection from social risks all represent serious practical problems. Trainees are also affected by the so-called legislative uncertainty, i.e. unclear legal framework for organization and implementation of traineeships, as well as explicit exclusion of trainees from protection legislation or low level of their protection. In this regard, the Draft Law confirmed two basic employer obligations and a number of other obligations.

The first essential obligation of the employer is to supply the tasks needed to gain experience and skills and to supply the necessary equipment. Charging the trainees for the costs of training, transportation and equipment shall be deemed a misdemeanour.

The second essential obligation of the employer is payment of compensation for traineeships, as paid trainees are more motivated to invest significant effort into gaining experience and skills and are able to devote more time to learning and training, as the compensation eases their need for economic security (i.e. they won't have to look for another job or another source of livelihood), while employers who pay trainees use traineeships more as a kind of a test of future associates' skills and abilities, than is the case with employers who don't pay their trainees.⁷

We should also have in mind that paid traineeships are especially important for trainees from small towns, who would not otherwise be able to cover the costs of accommodation and transportation. The same is true for other categories of trainees who, due to their financial situation, cannot afford to do unpaid traineeships for several months.

On the other hand, the fact that the trainees get the opportunity to gain experience skills and contacts with future employers, and increase their chances of finding a job with the same or another employer should be taken into account when establishing the amount for the compensation⁸. The authors of the Draft Law had

7 P. McDonald, A. Stewart, D. Oliver, « Challenging the assumptions supporting work experience as a pathway to employment », in A. Stewart, R. Owens, N. O'Higgins, A. Hewitt (eds), *Internships, employability and the search for decent work experience*, Edward Elgar Publishing/International Labour Office, Cheltenham, Northampton, Geneva, 2021, p. 83.

8 J. López López, « Traineeships and systematic discrimination against young workers », in A. Stewart, R. Owens, N. O'Higgins, A. Hewitt (eds), *Internships, employability and the search for decent work experience*, Edward Elgar Publishing/International Labour Office, Cheltenham, Northampton, Geneva, 2021, p. 324.

these circumstances in mind, as well as the principle of equal pay for equal work, and established that the amount of compensation for a traineeship shall be at least 2/3 of the minimum wage, in accordance with the Labour Law, plus contributions for social insurance.

Among the non-essential obligations of the employer is the pre-contractual duty to provide information to the traineeship candidates, and, after the contract is entered into, the obligation of the contracting parties to inform each other on relevant issues regarding the implementation of the contract.

The employer's obligation to provide information is particularly significant given that the lack of information is one of the main causes of the poor quality of traineeships and the problems that trainees face, much more often than the employees.

Furthermore, the Draft Law on traineeships extends certain aspects of labour law protection to trainees. More precisely, the provisions of the Labour Law which regulate working hours, breaks during working hours, daily and weekly rest periods and paid annual leave shall be applied to trainees, while overtime work, redistribution of working hours and work during non-working holidays shall be prohibited. The provisions of the Labour Law that regulate the protection of the occupational health and safety, special protection of minors, compensation of work-related expenses and tort liability, also apply to the trainees. The instructive norms regulate the protection of trainees from mobbing and discrimination at work, therefore, the provisions of the Law on Prohibition of Discrimination and the Law on Prevention of Mobbing at Work also apply to trainees.

Trainees also have the right to a mentor to help them with learning and training, as well as the right to guidance from a mentor on how to achieve the goals of the traineeship, assuming they're failing to achieve them i.e. failing to develop the skills in accordance with the traineeship plan. The trainees also have the right to have their progress in training, as well as skills and experience they've acquired through the traineeship, objectively evaluated, in accordance with the training plan and goals. Finally, trainees have the right to receive a certificate of the completed traineeship, which can be used as proof of work experience when seeking employment with other employers. Trainees are also covered by mandatory pension and disability insurance, as well as the health insurance, and their primary obligation is to perform the entrusted tasks at the time and place determined by the employer, respecting the employer's organization of work and business.

The Draft Law has confirmed the non-disclosure obligation, as well as the obligation to protect inventions created by the trainees during the traineeship or in connection with the traineeship.

In light of the need to create the conditions for effective participation of employees in decision-making, as well as the need to prevent misuse of traineeships, the Draft Law has reaffirmed the duty of employers to inform and consult the union or employee representatives on traineeship requirements, and upon their request, submit a list of trainees at the beginning of each calendar year, with information on their jobs and training goals.

We believe that this solution is important because of the need to ensure employee participation, especially for the decisions relevant to adapting the work environments

to changes in the labour market and transferring skills among workers of different generations, as well as ensuring worker competence for the company⁹.

We can conclude that the drafting of the Law on traineeships was a small but important step in improving the employability of workers in the Republic of Serbia. It can also be said that the new law will be able to achieve its goals only if the state provides employers with sufficient incentives to engage workers without experience.

In this respect, there is a need for future law on traineeships to be accompanied by the provision of tax and similar incentives, so that the adopted provisions do not remain just a « dead letter ».

9 J. Julén Votinius, M. Rönmar, « Internships and apprenticeships in Sweden, collective bargaining and social partner involvement », in A. Stewart, R. Owens, N. O'Higgins, A. Hewitt (eds), *Internships, employability and the search for decent work experience*, Edward Elgar Publishing/International Labour Office, Cheltenham, Northampton, Geneva, 2021, p. 145.

REVUE

DE DROIT COMPARÉ
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Manuscripts submitted for publication in the **Comparative Law Review of Labour and Social Security** [Revue de Droit Comparé du Travail et de la Sécurité Sociale] should be sent by e-mail or by post before **February, the 1st** of each year (for the Studies, the Comparative Social Jurisprudence and the International Social Jurisprudence) and before **June, the 1st** of each year for the Thematic Chapter. About the contributions to the International Legal News, they must be sent before **February, the 1st** (for the first issue) and before **September, the 1st** (for the third issue).

The opinions expressed in the articles are the sole responsibility of the authors. When translation is carried out in French, it is under the responsibility of the Chief Editor and members of the Editorial Board.

Every manuscript is submitted, without mentioning the name of the author, to two readers for evaluation and publication notice.

A subsequent publication in another journal would require authorization express of the Direction of the Review.



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AJP/PJA = Aktuelle juristische Praxis - Pratique juridique Actuelle (Suisse)
BCLR = Bulletin of Comparative Labour Relations (Belgium)
CLELJ = Canadian Labour & Employment Law Journal (Canada)
CLLPJ = Comparative Labor Law & Policy Journal (United States)
DRL = Derecho de las Relaciones Laborales (Spain)
DLM = Diritti Lavori Mercati (Italy)
E&E = Employees & Employers: Labour Law & Social Security Review (Slovenia)
EuZA = Europäische Zeitschrift für Arbeitsrecht (Germany)
ELLJ = European Labour Law Journal (Belgium)
DLRI = Giornale di Diritto del Lavoro e delle Relazioni Industriali (Italy)
ILJ = Industrial Law Journal (UK)
IJCLLIR = Giornale di Diritto del Lavoro e delle Relazioni Industriali (Italy)
ILR = International Labour Review (ILO)
JLR = Japan Labor Review (Japan)
JCP = Juris-Classeur Périodique (France)
LD = Lavoro e Diritto (Italy)
OIT = Revue internationale de travail
PMJK = Pécsi Munkajogi Közlemények (Pecs Labour Law Journal) (Hungary)
RL = Relaciones Laborales (Spain)
RDS = Revista de Derecho Social (Spain)
RDCTSS = Revue de Droit Comparé du Travail et de la Sécurité Sociale (France)
RDT = Revue de Droit du Travail (France)
RGL = Rivista Giuridica del Lavoro e della Previdenza Sociale (Italy)
TL = Temas Laborales (Spain)
ZIAS = Zeitschrift für ausländisches und Internationales Arbeits und Sozialrecht (Germany)

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