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Croatia

EMPLOYMENT & LABOUR LAW

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

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CROATIA
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1. What measures have been put in place to protect employees or avoid redundancies during the coronavirus pandemic?

The government launched the first package of measures to mitigate the effects of the Covid-19 pandemic on the economy in March 2020. The package included a salary subsidy in the amount of the Croatian minimum wage, which is HRK 3250 (aprox. EUR 430). The measure was intended for affected businesses, either those who experienced a significant drop in income (seasonal workers, the tourism and hospitality sector) or who were prevented from performing their regular business activities by the National Civil Protection Directorate's decisions.

The salary subsidy was increased to HRK 4000 (approx. EUR 530) for April and March, with the state covering contributions on the salary amounting to approximately HRK 1460 (approx. EUR 195). The measure was available to all business owners (companies, trades and independent professions) who recorded a 20% decrease in revenue compared to the respective month in 2019, under the condition that they keep the same number of employees.

The salary subsidy in the same amount continued to be available for the rest of 2020, albeit with slightly changing conditions and target sectors. For the summer months employers needed to prove a 50% or even 60% drop in revenue and the measure was restricted to certain, most affected, industries. In the same period micro-entrepreneurs (up to 9 employees) could apply for a salary subsidy in the amount of HRK 2000 (approx. EUR 265), also proving a drop in revenue.

From September to December, the same salary subsidy was made available to businesses who were prevented from performing their business activities without the revenue criterium, or to those whose operation was limited by the Civil Protection Directorate's decision and suffered a 60% decrease in revenue.

Several job retention measures remain active in 2021 and 2022 with the extension of application criteria to include not only businesses affected by the Covid-19 pandemic, but also those in regions most affected by the 2020 earthquakes in Zagreb and Petrinja.

Another measure available until the end of 2021 is the salary subsidy for employers who had to shorten their working hours due to diminished workload. This subsidy is provided in the amount up to HRK 3600 (approx. EUR 475), allocated on an individual case basis, and for up to a 90% reduction in working hours.

The subsidy for employers who had to shorten their working hours has been prolonged until the end of 2022, up to HRK 2000 (approx. EUR 265), allocated on an individual case basis, in all sectors, for employers with minimum 10 employees, and for up to a 50% reduction in working hours.

The salary subsidy of up to HRK 4000 (approx. EUR 530) has also been retained for January and February 2022, but not yet confirmed for March 2022. The prerequisite for payment of the subsidy in full is that at least 70% of employees have COVID-19 passports.

2. Following the covid-19 pandemic, have new employee rights or protections been introduced in respect of flexible or remote working arrangements?

So far, the new employee right or protections has not been introduced. A draft of the new Labour Act is discussed between the Government of the Republic of Croatia and the Trade Unions.

3. Does an employer need a reason in order 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 organisational 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. If the employer does not follow any prescribed procedure as described in response to question 8, 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.

11. 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.

12. 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,
- 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.

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

An employer with 20 or more workers is obliged to appoint a person for dealing with complaints related to discrimination or harassment. The complaints have to be considered within 8 days 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.

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 behaviour 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 colour, 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.

14. 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.

15. 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, 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.

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

On 1 July 2019 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 cannot place a whistleblower in an unfavourable position for reporting irregularities. It is explicitly prescribed that termination of employment is considered placing the whistleblower in such a position. Furthermore, the LLA also explicitly states that employment contracts may not be terminated if the worker approaches competent authorities with a complaint regarding corruption.

Pursuant to the WPA, employers are also prohibited from banning whistleblowing, denying or violating the rights afforded to whistleblowers by the WPA or placing whistleblowers in an unfavourable position through their bylaws. Such clauses of employers' bylaws have no legal effect.

The WPA also prescribes that reporting irregularities is not considered a violation of business secrecy.

Whistleblowers have the following rights according to the WPA: protection as part of prescribed procedures for

reporting irregularities, court protection, compensation for damages and protection of identity and confidentiality.

If a harmful action was undertaken against a whistleblower for reporting irregularities, they are entitled to court protection. Whistleblowers may file a claim with the competent court within 3 years from discovering the harmful action undertaken against them, but no more than 5 years from the time the harmful action was undertaken. With regards to the burden of proof, if the whistleblower demonstrates that it is probable that he was placed in an unfavourable position for reporting irregularities and that some of his employment rights were violated, it is up to the employer to prove otherwise. However, the WPA does not explicitly prescribe sanctions for employers who place whistleblowers in an unfavourable position. Fines are only prescribed for employers who prevent whistleblowers from reporting irregularities, who disclose or try to disclose whistleblowers' identities, who do not follow the prescribed procedures of reporting irregularities, who fail to protect whistleblowers according to the WPA, from harmful actions undertaken against them or otherwise. The prescribed fines range from EUR 1.350,00 to EUR 6.710,00 for employers who are legal persons and EUR 140,00 to EUR 4.100,00 for employers who are natural persons.

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

Severance pay depends on the duration of the employment relationship. Workers have the right to severance pay except when the contract is terminated due to the worker's breach of contractual obligation. The law prescribes the minimum amount of severance pay which may not be lower than one-third of the average monthly salary earned by the worker in the three-month period preceding the termination of the employment contract.

The aggregate amount of severance pay may not exceed six average monthly salaries earned by the worker in the three-month period preceding the termination of the employment contract. 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 unauthorised 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 favourable 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 misdemeanour 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 on 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?

There have been announcements about significant amendments to the existing Labour Law Act and a draft act was expected in September 2020, however this has not happened so far. At present, a draft of the new Labour Law Act is discussed between the Government of the Republic of Croatia and the Trade Unions. The amended LLA should bring more specific regulation of remote work (working from home) and certain changes regarding termination of employment, especially for permanent employment contracts. However, this is still in the realm of media speculation and individual statements from Ministry officials so employers should wait for official announcements and the first draft of the amendments.

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