



FICIL
RAISE THE BAR!



Position Paper No. 4

Foreign Investors' Council in Latvia Position Paper on Labour Force Issues

16 September 2021

Executive Summary

Taking into account the importance of the labour force for fostering Latvia's economic growth, the Foreign Investors' Council in Latvia (hereinafter - FICIL) both once again highlights the issues already outlined in the reports of previous years and also introduces new recommendations in this report, drawing attention to the problems faced by various companies over the last year.

For several years, FICIL has already referred to the concerns related to the sick-leave certificates (SLCs) issued on false grounds. In this position paper FICIL shares the experiences of its members and makes proposals to expand the role of the Health Inspectorate in order to eradicate this issue. Recommendations contained in the report also concern the issues of data quality and data availability in respect of the presentation of SLC-related information on the EDS system.

Given that the effectiveness of the existing system of mandatory health examination (MHE) is comparatively ambiguous in terms of achieving its goals, FICIL reiterates its call for the review of the procedures for carrying out the MHE, in particular in jobs involving an increased risk

to employees. The position paper emphasises that if the MHE is carried out poorly, it presents a risk not only to an employee himself or herself but also to the employer, other employees, and even clients.

Companies also stress that the Labour Law does not correspond to the contemporary requirements of the labour market. Hence, FICIL suggests a number of proposals to facilitate the flexibility of the Labour Law. FICIL recommends clarifying in the text of the Labour Law the application of the part-time aggregated working time, and also makes a proposal for an extended time period for the notice of termination by an employee and a zero-hour contract.

Finally, FICIL re-emphasises the issues of the promotion of regional employment and labour mobility that are important both in the context of elimination of the consequences of COVID-19 and economic recovery and in the long term, in order to ensure that during a period when the economic situation in the country is improving, it is not slowed down by insufficient availability of the labour force.



Content

02 Executive Summary



04 Recommendations



07 Rationale for recommendations



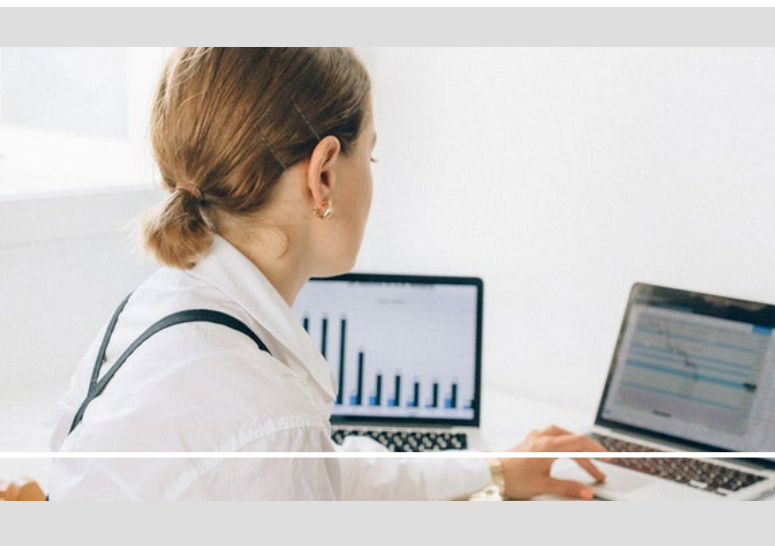


Recommendations

Issue of sick-leave certificates and mandatory health examination

▶ Issue of sick-leave certificates

Problems related to the issue of SLCs, including cases where there is a substantiated suspicion that an SLC has been issued on false grounds, not only lead to losses for employers but also cast doubts on the entire system in general.



Therefore, FICIL makes the following proposals for dealing with such issues:

1. Extending the rights of the Health Inspectorate in examining issues regarding substantiation of the issue of SLCs.
2. Increasing the responsibility of physicians/physician's assistants in cases where it is recognised that the SLC has been issued on false grounds.
3. Proposals for improvements in the EDS system:
 - (a) inclusion of the information on the date and time when the SLC has been issued (the time when the employee has visited a physician/physician's assistant) so that the employer may ascertain that the SLC has been issued before or after imposing a disciplinary penalty or issuing a notice);
 - (b) inclusion of the information on the treatment regime determined for the employee;
 - (c) inclusion of the information on the medical treatment institution and physician/physician's assistant that has issued the SLC;
 - (d) inclusion of the information on the detection of an occupational disease of the employee;
 - (e) an obligation of the physician/physician's assistant to register the opened SLC on the first day of incapacity for work.

► Issues of the mandatory health examination

Since various companies have faced situations where employees provide false health information in the MHE process, improvements would be required in this process in order to avoid potential risks faced by employees as a result of carrying out duties which do not correspond to their health condition.

FICIL makes the following proposals for improving the MHE process:

1. Establish the MHE procedures similar to those laid down in the Cabinet Regulation No. 698 of 1 November 2016, Procedures for Carrying Out a Health Examination of Civil Aviation Staff, Issuing a Health Certificate, Certifying Aeromedical Examiners and Aeromedical Centres, for employees expected to be employed in particular working conditions.
2. Use the opinion of a general practitioner (GP) in the MHE process providing the option for a GP to deliver such opinion electronically recording it in the E-health system.
3. Consider the possibility of drawing up a list of comments and recommendations for employers or requirements/criteria for such recommendations for an MHE card under the section "Special comments and recommendations for the employer" in order for them to be as specific as possible and make compliance easy to understand.
4. Ensure that in the MHE process an occupational physician and other specialist physicians involved in the MHE have information available regarding the health condition of employees, namely that other registers are available containing the health information of employees, such as critical illnesses or occupational diseases.
5. Ensure that information on the number of years worked by employees in working conditions harmful to health and particular working conditions is available to an occupational physician in the MHE process; moreover, it is retained when changing the employer or position.

Amendments to the Labour Law

► Introduction of the part-time aggregated working time

There are currently different interpretations and positions taken publicly by public institutions in respect of the application of the part-time aggregated working time. FICIL members believe that this uncertainty significantly restricts the possibilities of employers and employees to agree on a mutually acceptable working time organisation model. Given the contradictory case law in this issue and the different views of legal professionals, it would be necessary to clarify the Labour Law by stating

that organisation of the aggregated working time is also acceptable for part-time employees. In order to guarantee the safeguarding of employees' rights, it could be a requirement that, in the case of part-time aggregated working time, it is necessary to determine the minimum guaranteed number of hours for an employee which may not be less than, for example, five hours a week (on average in the reporting period).

► Extended time period for the notice of termination by an employee

In the view of FICIL members, amendments would be required to the Labour Law which would allow that at the time of entering into an employment contract the parties agree on a longer time period for the notice of termination by an employee, such as two or three months instead of the current one month. This would be an agreement between both parties at the time of entering into the employment contract and would significantly protect the ability of the employer to ensure the continuity of processes in case of the notice of termination by the employee, where the employee holds a position which requires specific knowledge and where it is not possible to train or find a new employee in a short period of time.

► Zero-hour contract

There are irregular short-term periods in specific economic sectors during which an increased demand for workers can be observed, yet this demand does not usually last for more than a couple of hours or days. Such cases are most common in the hospitality sector, for example, when organising and servicing conferences or other events. In the view of employers, the Labour Law is currently lacking a flexible solution which is easy to administer, thus making it more difficult to attract the necessary manpower in such short-term cases. In order to make the Labour Law more flexible for both employers and employees, FICIL calls for considering the option to introduce a zero-hour contract in the existing regulation. Such contracts enable companies to attract employees who have previously demonstrated their willingness to do short-term work in their free time, however, do not wish to enter into commitments with a specific employer. On the one hand, the employer would be given the option of establishing a contractual relationship with an employee without guaranteeing certain working hours, but offering him or her the opportunity to carry out work in cases of short-term and irregular demand. On the other hand, employees would be able to accept or reject the specific offer made by the employer.

Facilitating regional employment and labour mobility

FICIL believes that the issues of regional mobility and employment have already been present for a number of years. However, in view of the current situation, one of the core means to mitigate the consequences of the pandemic could be the promotion of regional employment and mobility. Regional mobility of labour is significantly impeded by both the high tax burden on employers in relation to attracting labour force from regions and the limited supply of quality rental housing and employee housing.

FICIL recommends developing the relevant infrastructure and facilitating regional mobility as follows:

1. Supporting companies' demands for employee housing facilities stipulating that the following are exempt from salary taxes:
 - a) payments of the employer that are used to cover the rental costs of employees if the place of habitual residence of an employee is in another city or region;
 - b) payments of the employer that are used to cover travel expenses incurred to travel to work and home if the place of habitual residence of an employee is in another city or region.
2. Increasing the supply for developers of infrastructure (in particular housing stock) in the form of co-financing or public-private partnerships.

For several years now, there has been some debate with different public institutions on FICIL's proposals above, however no considerable improvements can be seen. Hence, in the context of the current situation, it would be of particular importance to provide additional opportunities for employers to attract labour force from regions with a lower employment rate in order to promote economic development.

Regulation of labour supply

Today, when the problem of labour supply has diminished for some time due to the pandemic, FICIL still calls for the issue regarding the introduction of a more appropriate regulation for attracting foreign labour to be addressed. Introduction of timely mechanisms for attracting foreign labour would be a forward-looking solution. When economic development will reach the stage where additional labour force is required, employers should be able to attract it quickly and simply, including from third countries. Thus, the national economic development would not be slowed down unnecessarily as it did at the end of 2019 and at the beginning of 2020 when, according to economists' assessments, economic development had started to decelerate for reasons including a shortage of labour.

FICIL does not deny that the primary concern should be attracting local labour to vacant positions. Hence, FICIL's Position Paper on Higher Education and Requalification offers solutions for the involvement of employers in the training and upgrading of skills of employees. However, experience in recent years has shown that the lack of workforce had become a serious obstacle to Latvia's economic development. Thus, it is still necessary to think about forward-looking solutions, including attracting third-country labour, in order to avoid the unnecessary slow-down of economic development.

Therefore, FICIL proposes that the amount of funds necessary for foreigners in the following sectors be reduced, determining it as not lower than the average gross salary in the sector selected by the foreigner:

- ▶ hospitality industry (hotels, restaurants etc.);
- ▶ road transport;
- ▶ logistics;
- ▶ food production;
- ▶ retail trade (insofar as knowledge of the official language is not required for the performance of duties).

Rationale for recommendations

Issue of sick-leave certificates and procedures for carrying out the mandatory health examination

► Procedures for issuing SLCs

For several years now, FICIL members have pointed out shortcomings in the procedures for issuing SLCs and their supervision, since they have often faced situations where employees obtain SLCs without any objective justification, for example, as soon as there is a risk of disciplinary action or notice of termination, or any other disagreement with the employer. According to the data provided by FICIL members, 10-30 % of all employees obtain SLCs monthly which significantly affects the daily work of companies. SLCs issued on false grounds lead to direct losses not only to employers but also to the State budget; moreover, it concerns both employers and public and local government institutions as employers. Such a situation also creates public distrust in the overall system as such. FICIL is grateful for the organised meetings with representatives of the Ministry of Health and the National Health Service, yet they have also revealed a clear need to improve the procedures for issuing SLCs. The COVID-19 pandemic has shown that the issue of SLCs is important in the daily work of companies, not only due to COVID-19 as an infection, but also due to its impact on health.

FICIL is also aware that it is often complicated to establish whether an SLC has been issued on false grounds. However, FICIL members have experienced situations suggesting that the rights and obligations of the Health Inspectorate should be extended, so that the Health Inspectorate could review the grounds for the issue of an SLC. For example, a FICIL member has faced a situation where an SLC was recognised by the Health Inspectorate as having been issued on false grounds, and it was cancelled. The employee in question immediately obtained an SLC in another institution and this time the Health Inspectorate recognised it as having been issued on reasonable grounds. The specific situation raised suspicions due to the fact that the second SLC was issued by the same physician who had issued the first one, but this time through a private practice. The FICIL member asked the Health Inspectorate to request data from a health insurance company in order to ascertain whether the employee was actually receiving treatment, and also accounting data from the private practice to make certain that the employee had in fact visited the physician, rather than just seeking help from the physician who was known to the employee. As regards the proposed actions, the Health Inspectorate indicated that such inquiries were beyond its competence. Although verification of financial documentation should

not be the primary task of the Health Inspectorate, in case of situations where it is necessary to verify whether the SLC has been issued on reasonable grounds, obligations of the Health Inspectorate should include all possible activities to make certain that a patient has actually visited a physician or an alleged illness is being treated, which may serve as additional evidence regarding reasonable grounds for the issue of an SLC. Otherwise, a situation arises where the Health Inspectorate limits itself to formally verifying medical documentation, although the primary objective of its activity is to check whether the SLC has been issued on reasonable grounds rather than evaluate the procedures for completing medical documentation.

As regards the extension of rights and obligations of the Health Inspectorate, FICIL also urges the Health Inspectorate to come up with suggestions on any further information which needs to be provided to the Inspectorate in order to make an objective assessment of the grounds for the issue of SLCs. It is likely that additional verifiable criteria for the assessment of health conditions should be established so that a physician/physician's assistant is entitled to issue an SLC.

Because SLCs issued on false grounds cause significant losses to employers and the State budget, and also affect the daily work of companies, in cases where the SLC is recognised as having been issued on false grounds, a greater responsibility of physicians/physician's assistants should be defined. SLCs should not be allowed to be issued without a physician/physician's assistant making certain of the health condition of a patient and the need for the SLC in a specific situation. Stronger administrative liability for the SLCs issued on false grounds could discipline physicians/physician's assistants and make them consider the need for the issue of SLCs more carefully. The Medical Treatment Law stipulates that for the failure to comply with the procedures for issuing and cancelling SLCs, a fine from twenty-eight to two hundred and eighty units of fine shall be imposed. Although such administrative liability is higher than the liability provided for in the Administrative Offence Code previously, the maximum prescribed fine of two hundred and eighty units of fine (EUR 1,400) amounting to about three minimum salaries in the country, however, cannot be considered a sufficiently significant amount of money for such offences in light of the losses caused as a result of the SLCs issued on false grounds. In FICIL's view, an issue that should also be considered is the withdrawal

of a physician's/physician assistant's certificate in case an SLC issued by the physician/physician's assistant is repeatedly recognised as having been issued on false grounds. For example, in Sweden a medical licence may be withdrawn in case an SLC is issued on false grounds. Although withdrawal of a physician's/physician assistant's certificate should be regarded as a final solution, FICIL emphasises that increasing administrative liability can be considered a solution in a situation where public distrust in the overall issue of SLCs can be observed, and it has also been established that SLCs are issued on false grounds in spite of the complicated evidentiary procedure.

▶ Recording the SLC data on the EDS

FICIL appreciates the improvements made in the EDS which enable employers to also see the information on opened SLCs. These improvements are essential to the daily work of companies, and FICIL members have already said that the changes introduced in the system work well.

In FICIL's view, the EDS (or any other system if the EDS was replaced by such) must be self-informative – the employer should be able to independently obtain all the necessary information on an SLC issued to an employee, to which the employer is entitled. Often, there are cases where the employee fails to provide the information on an opened SLC or does not provide it in a timely manner, or the information provided is incorrect or inaccurate. In such situations, the employer is forced to spend its administrative resources, including submitting a request to the responsible institutions to clarify the actual situation, which has caused unnecessary uncertainty in employment relationships on many occasions.

Hence, given the experience of its members, FICIL suggests that the following improvements are made in the EDS:

1. FICIL members have faced situations where an employee opens an SLC on the day that disciplinary action is taken or notice of termination is given. Consequently, this leads to a potential dispute, since, pursuant to the Labour Law, during a period of an employee's temporary incapacity for work, neither disciplinary action may be taken nor employment relationships terminated (Section 90, Paragraph three and Section 109, Paragraph three of the Labour Law). In such cases, the employer has to ask the Health Inspectorate to clarify the circumstances in which an SLC has been issued, which also imposes an additional workload on the public institution. For example, FICIL is aware of a case where an employee was given a notice of termination at 9:00 a.m. The employee did not inform the employer regarding the employee's temporary incapacity for work, however, in the evening of the same day,

the employee sent an SLC to the employer adding that the employee had informed the employer regarding their temporary incapacity for work. The employer contacted the Health Inspectorate which established that a specific general practitioner who had issued the SLC only worked in the afternoons. Thus the SLC could not have been issued before the notice of termination which was given by the employer at 9.00 a.m.

In order to avoid such situations, FICIL suggests including information in the EDS system regarding the date and time when an SLC has been issued (the time at which the employee has visited a physician/physician's assistant) so that an employer may independently ascertain whether the SLC has been issued before or after taking disciplinary action or giving notice of termination. This would ease the pressure on the Health Inspectorate, since there would also be no need to submit a request, as indicated above.

2. Today more and more employees are diagnosed with illnesses that do not require hospital treatment or treatment at home. This means that during a period of temporary incapacity for work the employee may continue attending social or sports events, travelling etc. In situations where the employer establishes that during a period of employee's temporary incapacity for work he or she continues to lead an active social life, do sporting activities etc., misunderstandings can arise in respect of the grounds for the issue of the SLC. Hence, in all the cases described above, the employers are forced to ask the Health Inspectorate to verify the grounds for the issue of the SLCs. Such situations could be avoided if information on the treatment regime determined for the employee was included in the EDS system. This would also ease the pressure on the Health Inspectorate.

3. In accordance with Cabinet Regulation No. 152 of 3 April 2001, Procedures for Issuing and Cancelling Sick-Leave Certificates, a physician/physician's assistant is entitled to make comments on violations of the treatment regime prescribed. It is most often employers who can establish violations of the treatment regime, hence it would be reasonable to include information on the medical treatment institution and physician/physician's assistant who has issued the SLC along with the recording of the SLC. This would also ensure more efficient compliance with the procedures laid down in the Cabinet Regulation.

4. FICIL members have also encountered situations where employees fail to provide in a timely manner the information on the existence of an occupational disease diagnosed or do not provide this information at all. Such diagnosis, however, imposes a number of obligations and restrictions on the employers. For example, the Labour Law provides for protection guarantees for employees with occupational diseases. In order to avoid situations



where the employer has no information on the occupational disease diagnosed or this information is received with delay, it is recommended to record such information on the EDS.

5. Finally, although the Cabinet Regulation No. 152 of 3 April 2001, Procedures for Issuing and Cancelling Sick-Leave Certificates, stipulates that the SLC shall be recorded on the first day of the period of incapacity for work and recording within five working days shall only be acceptable for technical reasons, it is common practice not to record the SLC on the first day of the period of incapacity for work, moreover, not always for technical reasons. In FICIL's view, now that opportunities provided by electronic technology have increasingly developed, recording the SLC with a delay of five working days should not be acceptable, since this can lead to a significant period of uncertainty for the employer who cannot establish that the SLC has been issued. It would be recommended to impose a clear obligation on a physician/physician's assistant in the Cabinet Regulation to record the SLC on the first day of the period of incapacity for work and such recording could be performed on the following working day only for important technical reasons.

► Procedures for carrying out the MHE

Pursuant to Cabinet Regulation No. 219 of 10 March 2009, Procedures for the Performance of Mandatory Health Examinations, in carrying out a health examination, an occupational physician asks questions to the person whose health is being examined in order to ascertain

whether he or she is fit for the work to be performed and fills out a questionnaire regarding their health. The occupational physician may also ask the general practitioner of the person examined for additional information in order to specify the details provided in the questionnaire. Experience shows, however, that occupational physicians hardly ever take the opportunity to obtain additional information on a person's health and, in fact, only rely on the information provided by the employee himself or herself.

FICIL members have faced situations where employees have provided false or incomplete information on their health to an occupational physician. For example, a FICIL member has experienced a situation where an employee was offered to amend an employment contract on the basis of the information indicated in the MHE opinion. The next day, the employee submitted a new MHE opinion with no comments on their working capacity. Other examples demonstrate that employees wear prescription glasses or computer glasses, yet MHE cards are received without any comments in this regard. Such situations can create potential risks not only to the employees themselves in performing work that they should not perform according to their health condition, but also to the employer, other employees, and even clients.

If it is intended to employ an employee in special working conditions, such risks are only increased and become more serious. In FICIL's view, in cases where an employee is to be employed in special circumstances, it should not be acceptable that the MHE is carried out only on the basis of the information provided by the

employee himself or herself. Therefore, FICIL proposes that the MHE procedures similar to those laid down in Cabinet Regulation No. 698 of 1 November 2016, Procedures for Carrying Out a Health Examination of Civil Aviation Staff, Issuing a Health Certificate, Certifying Aeromedical Examiners and Aeromedical Centres, are established in respect of such employees. This means that in cases where an employee is employed in special conditions, the MHE would be carried out in specially certified medical centres or by certified expert occupational physicians, and also the employee would be obliged to submit a general practitioner's opinion indicating medical facts about their general state of health. Thus situations could be avoided where persons whose health does not conform to a specific position are employed in special conditions.

In light of the recent technological developments and in order to avoid situations where the MHE process becomes long and complicated, FICIL suggests ensuring a technical option for general practitioners to submit electronically the opinion referred to in the paragraph above in the E-health system. Consequently, the employee would not have to visit the general practitioner in order to obtain the opinion prior to carrying out the MHE.

FICIL members have faced situations where instructions provided by occupational physicians in the section titled "Special comments and recommendations for employers" of the MHE card are vague or can be interpreted differently, and, in certain cases, it is even impossible to follow them.

Here are some examples:

- ▶ "Glasses must be worn" - it is unclear what kind of glasses are meant (prescription glasses or protective goggles);
- ▶ "Not more than 65 % of 1.0 load at the hourly work rate" - it is unclear what hourly rates are meant and why an occupational physician determines it;
- ▶ "Must keep away from heating elements" - it is unclear what the respective comment means and how it can be implemented, what degrees must be reached for a person to stay away from a heating element, whether a heater is also considered as such heating element;
- ▶ "Please reduce the number of nightshifts" - it is unclear by how many the nightshifts should be reduced;
- ▶ One year "a contraindication to work in cold" was indicated in an employee's MHE card, while the next year it stated "a contraindication to work at heights above 0.5 m".

In order to avoid such situations and ensure the working conditions necessary for employees, it would be advisable to consider drawing up a list of comments and recommendations for employers or establish

requirements/criteria for such recommendations in order for them to be as specific as possible and compliance with them as clear as possible.

As already mentioned above, employees often fail to provide complete information about their health condition. In order to prevent such situations (irrespective of whether or not it is intended to employ an employee in special conditions), it would be necessary to ensure that additional information regarding employees' health is available to an occupational physician, as well as other specialist physicians who are involved in the MHE process. Namely, that other registers are available containing the health information of employees such as critical illnesses or occupational diseases. It would be necessary to ensure that information from other registers, which can provide additional information on the health condition of employees by way of indication, is available to physicians during the MHE process. There have been situations where a person with an oncological disease and partial loss of capacity for work had no additional comments in the MHE card as to the employee's fitness for the work to be performed.

Paragraphs 8 and 9 of the MHE card require information on the number of years worked by employees in working conditions harmful to health and special working conditions. Such information may only be obtained by relying on the information provided by the employee and an occupational physician cannot verify it during the MHE. Hence it would be necessary to ensure that such information is recorded electronically and is available to an occupational physician in the MHE process. Moreover, it is important that such information is retained when changing employers and jobs.

Amendments to the Labour Law

- ▶ Introduction of the part-time aggregated working time

It is currently unclear as to whether the aggregated working time can be applied to part-time employees. This is of special importance to companies working in customer service (hotels, cafés, restaurants, shops, customer service centres, and other retail outlets). Such jobs are usually taken by students who combine work and studies, and also other categories of people who do not wish to work full-time. Work is most often carried out by specifying a non-standard daily working time according to the wishes of the employee in a specific period of time, and also the specific character of the work to be carried out (for example, the working hours of a restaurant). Thus employers are in need of an effective, flexible mechanism for organising working time in line with the wishes and options of employees that are balanced against the needs of the employer.

The aggregated working time would allow for flexible and efficient organisation of working time.

In order to put an end to legal uncertainty and allow companies to employ employees in an efficient and flexible manner, amendments are necessary to the Labour Law clearly stating that the system for organisation of the aggregated working time may also be applied to part-time employees. Such amendments could be made by supplementing Section 140 of the Labour Law with Paragraph eight: "(8) The aggregated working time may be applied to regular or part-time employees. If the aggregated working time is applied to part-time employees, then the employment contract shall specify the number of the minimum guaranteed hours per week which is calculated on average for the reporting period."

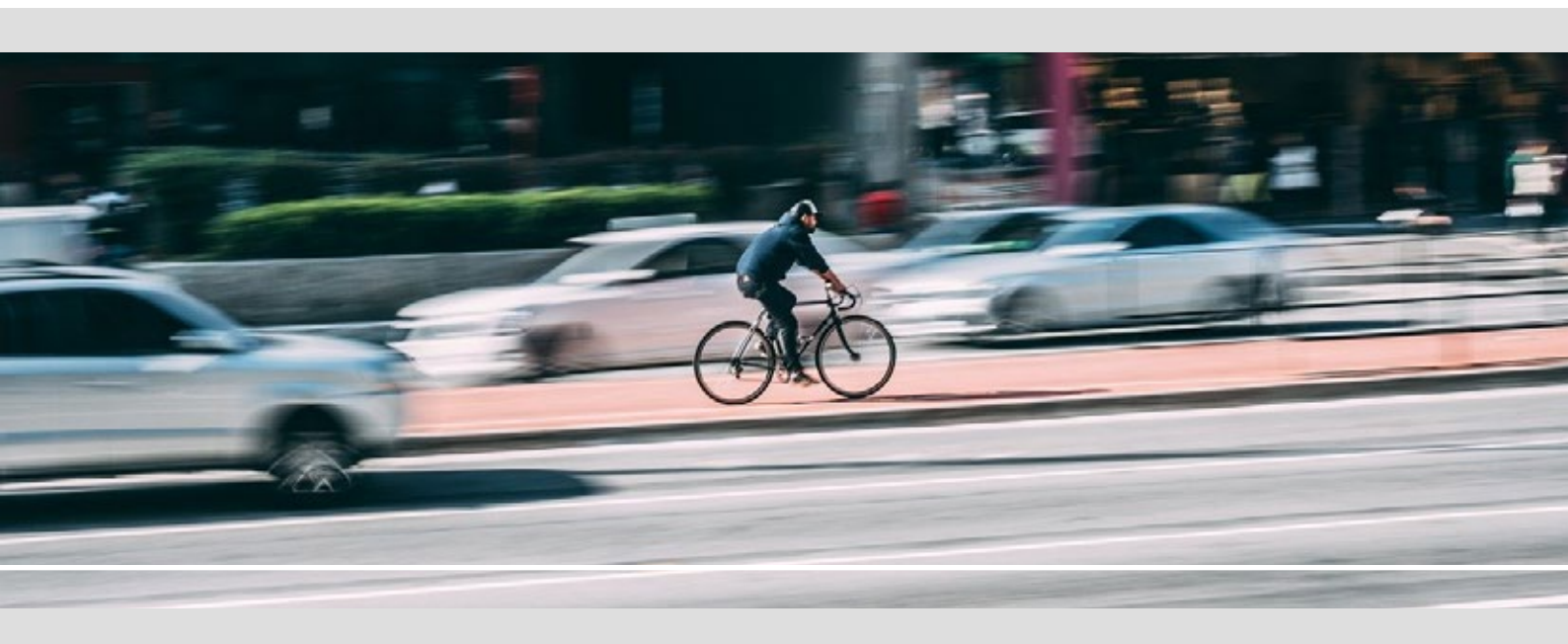
▶ Extended time period for the notice of termination by an employee

It is of critical importance to employers to ensure continuity of work processes in highly seasonal jobs or jobs where an increased workload is common on a regular basis. This is particularly important in situations where jobs require specific knowledge, the acquisition of which takes time. In such cases where an employee gives the notice of termination, it is virtually impossible to find a new employee in such a short period of time. Amendments to the Labour Law which would permit that parties agree on a longer time period for the notice of termination by an employee (such as two or three months) at the time of entering into an employment contract would make it easier for employers to perform adequate resource planning in the busiest work periods,

and also protect investments made by companies in the development of skills of employees. Such agreement would only be acceptable at the moment of entering into the employment contract providing for the condition that the employer may derogate from this agreement by paying a compensation for these months, i.e. for the entire period exceeding the standard one-month period for the notice of termination. Hence FICIL suggests supplementing Section 100 of the Labour Law with Paragraph six stipulating that "*Prior to establishing an employment relationship the employee and the employer may agree on a longer time period for the notice of termination than that specified in Paragraph one of this Section. In case of such notice of termination by the employee, the employer is entitled to derogate from the time period for the notice of termination specified by parties by paying to the employee a compensation in the amount of average earnings for the time period exceeding the one-month time period for the notice of termination.*"

▶ Zero-hour contract

There are irregular short-term periods of high demand in specific economic sectors and in particular in the hospitality sector – hotels, restaurants, catering, organisation of events, cleaning etc. Such cases can be, for example, the servicing of a specific event which requires a large number of employees for one day, event or occasion. Provisions of the Labour Law are not sufficiently flexible, in the current context, to satisfy such needs of employers. Moreover, requirements for the minimum State social insurance contributions from 1 July 2021 make the situation of employers engaged in the respective sectors even worse.



Experience in the Scandinavian countries, in particular Sweden, shows that, for example, in hotels and restaurants, it is also possible to enter into zero-hour contracts in parallel with full-time or part-time contracts, fixed-term contracts or contracts with an indefinite duration. Such employment contracts are entered into with persons who are willing to establish an employment relationship without entering into commitments with a specific employer and to take opportunities to do short-term work in their free time. Thus companies working in the respective sectors have databases containing information on employees who have demonstrated their willingness to be invited to work. The employer does not guarantee working hours under a zero-hour contract but offers at least three working hours in case of short-term irregular demand. The employee in turn is given a choice to accept or reject the working hours offered on a specific day at a specific time.

A zero-hour contract has no date of expiry, but the employer may terminate it unilaterally if the employee continuously rejects the offered working hours for months or breaks off contact with the employer. Alternatively, in case the level of cooperation between a specific employee and employer rises to at least 15 hours per week for at least two months, the wish or need of both parties to enter into an employment contract with more binding terms and conditions should be considered.

Payment for work under a zero-hour contract may not be lower than the minimum hourly rate determined in the country, and it should also include the payment

for the leave earned in proportion to the time worked. Moreover, the employee does not qualify for sickness benefits or any other benefits provided by the employer.

Facilitating regional employment and labour mobility

The issue of attracting labour force to economically less developed Latvian regions has already been present for several years. Deterioration of the economic situation does not undermine the significance of this issue, since a potential wave of emigration should also be considered, because of which the issue of labour supply will still be important. Hence FICIL, as in previous years, calls for regional employment and labour mobility to be facilitated in order to avoid impeding economic development of the country.

► Taxes for accommodation and travel costs of regional labour

A number of FICIL members are already taking measures to facilitate regional mobility by attracting labour resources to regional centres. In practice, however, entrepreneurs face serious obstacles to such labour mobility. The major obstacles include excessive costs associated with attracting regional labour, and also a lack of appropriate housing stock in regional centres and suburbs.

If the employer covers the accommodation and travel costs of an employee, these payments are considered to be the employee's taxable income from which the



employer must both withhold the personal income tax (PIT) and make mandatory State social insurance contributions. Such tax burden applicable to the measures to attract regional labour makes mobility measures economically unsubstantiated thus impeding the attraction of labour and reducing the competitiveness of companies.

In light of the abovementioned facts, FICIL suggests to the government that changes are made in the taxation system stating that the payments made by the employer for an employee's accommodation in a city (hostel, employee housing, rental apartment or other) and travel expenses incurred to travel to work and home in a region are not considered to be an employee's taxable income.

▶ Facilitating construction of housing stock

The second serious obstacle to attracting manpower is insufficient housing stock in regional centres. The market does not effectively deal with this problem, since investments in the construction of dwelling houses have a long repayment period, as people have a comparatively low ability to pay. Thus it is important that the State and local governments also become involved in addressing the current situation.

FICIL welcomes the programme developed by the government that provides the possibility for capital companies of local governments to borrow funds from the Treasury and support the construction, restoration, reconstruction of residential rental houses or purchase of newly built, restored, or reconstructed residential rental houses. FICIL believes that the government can also efficiently facilitate the construction and restoration of housing stock by other means. The abovementioned changes in the taxation system in respect of payments made by employers for travel and accommodation costs of employees would boost demand for rental houses. At the same time it is possible to promote development of construction of the housing space necessary for attracting labour force by stimulating the supply of such housing space. This can be achieved by introducing and implementing programmes that envisage the allocation of co-funding or promote public-private partnerships.

Regulation of labour supply

For several years now, FICIL has emphasised the issue of labour supply. Although the pandemic and its effects have caused some adjustments, FICIL still calls for this issue to be considered in the long-term context and believes that it remains valid today. While FICIL welcomes the amendments made to a number of Cabinet regulations that ease attracting third-country labour, and it is expected that adoption of the new Immigration Law could simplify various immigration-related issues, third-country labour is still considered a fast and simple way of attracting labour force where it is necessary for employers.

Although the position of the Latvian government on attracting a highly skilled workforce is understandable, employers, however, also need a less skilled labour force and this issue should be viewed in the long term.

If only a highly skilled workforce is attracted from third countries, a situation arises where less qualified jobs are left for the local residents of Latvia. In FICIL's view, such approach is neither correct nor forward-looking if the goal is to increase the level of education of Latvian residents and provide jobs with high added value. In order to meet the objectives identified in the current Government Declaration in respect of involvement of Latvian residents in jobs with greater productivity and higher remuneration, a solution is necessary to fill the vacant positions which do not require a special qualification or require less qualified skills.

Reducing the amount of funds necessary for foreigners in certain sectors would make it possible to find a temporary solution to relieve the labour shortages also in the segment of less skilled workers and ensure that economic development is not slowed down until the remigration measures and measures to increase the birth rate introduced by the government start producing results. It is also possible to implement such a regulation with certain additional conditions in order to protect the labour market from an uncontrolled labour supply.



Position Paper No. 4

Foreign Investors' Council in Latvia Position Paper on Labour Force Issues

FICIL is a non-governmental organisation that unites 38 largest foreign capital companies from various industries, 10 foreign chambers of commerce in Latvia, French Foreign Trade Advisers and Stockholm School of Economics in Riga. The goal of FICIL is to improve Latvia's business environment and overall competitiveness in attracting foreign investment, using the experience and knowledge of its members to provide recommendations to Government and state institutions.

www.ficil.lv