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Analysis of the provisions of the Labor Law

in terms of student engagement in order to acquire knowledge through work

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Abstract	This document contains amendments to the accreditation standards regarding dual study programs in higher education. Accreditation standards must be in line with the Law on Higher Education of Serbia and Law on Dual Education.

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3.0	09/11/2020	Minor corrections	UB (Nenad Zrnić and Žarko Mišković)

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General comment:

In December 2019, the Republic of Serbia adopted the Law on the Dual Model of Studies in Higher Education. This law, as defined in Article 1 of the Law "regulates the content and manner of realization of the dual model of studies in higher education, mutual rights and obligations of students, higher education institutions and employers, material and financial supply for students, as well as other issues of importance for realization of studies according to the dual model ". This law envisages a specific type of learning through the work process, but without establishing an employment relationship, so there is no essential need to amend the Labor Law, because everything related to student employment is defined by the Law on Dual Model of Studies in Higher Education and related acts.

Article 1 of the Law on Dual Model of Studies in Higher Education regulates "the content and manner of realization of the dual model of studies in higher education, mutual rights and obligations of students, higher education institutions and employers, material and financial provision of students, as well as other issues of importance study according to the dual model ".

Like the aforementioned Law on the Dual Model of Studies, the Labor Law of the Republic of Serbia also recognizes "Work outside employment" in the form of "temporary and occasional jobs" (see Article 197 of the Labor Law of the Republic of Serbia).

The relevant article of the Labor Law states that: An employer may, for the performance of jobs that are such in nature that they do not last longer than 120 working days in a calendar year, conclude a contract for temporary and occasional jobs with: an unemployed person … The similarity that the mentioned forms of work outside the employment relationship in the Labor Law can have with "learning through work" in the Law on the dual model of studies in higher education is in the part where it is a contract on a certain job, but without employment. However, there is a genus difference between these two types of work engagement, which requires different legal treatment of these matters. This difference is primarily manifested in the fact that "work outside the employment relationship" is still treated as work, while the employment of students through a dual model of study is treated as work that aims to acquire knowledge.

The dual model of education also implies the student's work activity with the employer, so the question arose: does the Labor Law, as the basic law regulating the matter from the employment relationship, enable the inclusion of students in the work process in order to acquire knowledge, considering that even in these cases no employment is established? Having in mind that the Labor Law envisages work "outside employment", it does not represent an obstacle for a student to be included in the work process with the employer in order to acquire certain knowledge through work provided in the Law on Dual Model of Studies in Higher Education.

Learning through work is a sui generis work engagement that, in addition to the basic requirements of the work process. ie. achieving certain results has another goal, and that is, that the student acquires certain knowledge in order to educate and train for independent work.

As for other rights based on the engagement of students with the employer, they are regulated in detail by the Law on the Dual Model of Studies in Higher Education and there is no need for them to be specifically regulated by the Labor Law. Also, the Law on the Dual Model of Studies in Higher Education prescribes in detail the obligations of the employer regarding the protection of students who work for the purpose of learning.

When it comes to other interests of students (see Article 10) but also employers who are involved in this type of contractual relationship (see Articles 20-25 of the Law), we believe that they are sufficiently protected. Thus, in Article 21 of the Law on the Dual Model of Studies in Higher Education, appropriate attention is paid to the financial and material security of students. Articles 31 and 32 also regulate all issues concerning the material and financial security of the student. Thus, for example, compensation for work-based learning is paid once a month no later than the end of the current month for the previous month for each hour spent on work-based learning in the net amount of at least 50% of the basic salary of an employee working on the same or similar jobs. with the Law and as follows in the Law.

Any other consequences that arise from the dual model of studies in higher education that affect the rights of the legal relationship that involve the engagement of students with the employer, both students and employers, are sufficiently regulated by the Law on Dual Model Studies in Higher Education and the Law on work which envisages and regulates work without employment. Having in mind that the Labor Law does not represent an obstacle for student employment in order to acquire knowledge through work and that the provisions of the Law on Dual Model of Studies in Higher Education sufficiently regulate the given matter, we believe that the Labor Law does not need to be changed.