

On 19 November 2012, the President of the Slovak Republic signed into law the highly-awaited and discussed Amendment to the Labor Code (the Amendment), which had been passed by the Slovak Parliament in October. The Amendment is due to come into force as of 1 January 2013.

As a follow up to our previous Newsletter, Squire Sanders has prepared an overview of the most significant changes introduced by the Amendment based on the wording passed in the parliament.

### Changes in the Scope of the Labor Code

The Amendment changes the definition of dependent work with the aim to limit usage of other types of contractual relationships for regulation of performance of work which in its essence is dependent work.

### Monitoring of Employees

Under the Amendment, an employer that intends to start monitoring of employees, and monitoring employees' phone calls and emails is required to discuss with employee representatives and inform employees about the scope of monitoring, how the monitoring is conducted and the monitoring's duration. The Amendment also introduces the right of an employee who thinks that the employer has acted in contravention of the Labor Code's rules on monitoring of employees, and believes that as a result his/her privacy has been compromised, to file a claim with the court.

### Strengthening the Position of Employee Representatives

The Amendment significantly strengthens the position of employee representatives. Several issues that until now the employer was able to stipulate by itself based on "discussion" with employee representatives now have to be "agreed" with the employee representatives. These issues include, among other things, introduction of flexible working time or introduction changes to standardization of work.

Under the Amendment, the limit of the number of employees who have to be members of the trade union operating at the employer in order for the trade union to represent these employees will be abolished. Under the current Labor Code a trade union which wants to represent employees must, upon the employer's request, demonstrate that at least 30 percent of the employees are members of this trade union organization. This limit is to be abolished in the Amendment and there will not be a minimum number of represented employees required in order for a trade union to be eligible to represent employees of the employer.

### Termination of the Employment Relationship

Under the Amendment any termination of an employment relationship by the employer will have to be discussed with the employee representatives in advance, otherwise the termination is invalid. The current Labor Code does not contain this obligation. Employee representatives have to discuss any notice given by employer within seven business days and in case of an intermediate

termination of employment relationship within two business days. Should the discussion not take place within the stipulated periods, it is deemed to have taken place and thus the employer is allowed to terminate the employment relationship. This new obligation should not be confused with the obligation of an employer to obtain prior consent of employees' representatives to the serving of notice of termination or termination of employment with immediate effect of a member of the relevant trade union body, a member of a works council or a works trustee.

The Amendment also re-introduces the entitlement of an employee to be paid both remuneration for work performed during the notice period and a severance payment. Such entitlement will depend on the length of the employment relationship and the way of its termination. Should the employment relationship be terminated by notice given by the employer on grounds that (i) the employer or part thereof is wound up or relocated and the employee does not agree with the change of the agreed place of work; (ii) redundancy; or (iii) specific medical condition of employee, the employee is entitled for severance payment as follows:

Duration of employment relationship:	Severance payment:
2 years < 5 years	At least 1 month's average salary
5 years < 10 years	At least 2 months' average salary
10 years < 20 years	At least 3 months' average salary
≥ 20 years	At least 4 months' average salary

Should the employment relationship be terminated by mutual agreement on the grounds that (i) the employer or part of the employer is wound up or relocated and the employee does not agree with the change of the agreed place of work; (ii) redundancy; or (iii) specific medical condition of an employee, the employee is entitled to severance payment as follows:

Duration of employment relationship:	Severance payment:
< 2 years	At least 1 month's average salary
2 years < 5 years	At least 2 months' average salary
5 years < 10 years	At least 3 months' average salary
10 years < 20 years	At least 4 months' average salary
≥ 20 years	At least 5 months' average salary

Under the current Labor Code, the statutory notice period is between one and three months depending on how long the employee has been employed with the employer. Under the Amendment the length of the notice periods stipulated in the Labor Code will be the minimum length, i.e. in an employment contract a notice period longer than the statutory notice period can be agreed.

## Extension of the Hours Constituting Work at Night

Under the Amendment night work would be work performed between 10 PM and 6 AM instead of the current 5 AM. This will result in higher costs for employers whose employees work at night as these employees are entitled to additional pay for each hour worked at night on top of regular remuneration. This additional pay has to be at least 20 percent of the minimum wage €1.94 per hour.

## Probationary Period

The current Labor Code permits extension of the statutory three-month probationary period in a collective agreement up to six months. However, there are two specific categories of employees with whom an even longer probationary period of up to nine months can be agreed in an employment contract based on a collective agreement – executive employees who report directly to the statutory body or to a member of the statutory body and employees who report directly to these executive employees.

Under the Amendment the maximum probationary period that can be agreed with an employee is three months. With an executive employee who reports directly to the statutory body or to a member of the statutory body and with employees who report directly to these executive employees, a probationary period of a maximum length of six months can be agreed.

## Changes to the Fixed-Term Employment Relationship

Pursuant to the current Labor Code, a fixed-term employment relationship may be agreed for at most three years and may be extended or renewed no more than three times within this three-year period. Under the Amendment it is possible to agree a fixed-term employment relationship for no more than two years and to extend or renew it a maximum of two times in this two-year period. However, fixed-term employment relationships concluded before 1 January 2013 will be governed by the current Labor Code, which means that fixed-term relationships concluded before 31 December 2012 can be concluded for 3 years.

## Decrease of Maximum Working Time of Executive Employees

The current Labor Code allows an average working time of 56 hours per week to be agreed with executive employees who report directly to the statutory body or to a member of the statutory body and employees who report directly to these executive employees. Under the Amendment this option will be abolished.

## Changes in Payment for Overtime Work

Under the Amendment it will no longer be possible to agree in a collective agreement a group of employees whose wage will include occasional overtime work of a maximum of 150 hours per calendar year.

Such an arrangement will be possible only in an employment contract and exclusively with executive employees who report directly to the statutory body or to a member of the statutory body, employees who report directly to these executive employees or with employees who perform planning, systems, creative or methodological activities, who manage, organize or coordinate complex processes or an extensive set of very complex equipment.

## Changes in Agreements on Work Performed Outside the Employment Relationship

The Amendment makes several provisions of the Labor Code which were not previously applicable to agreements on work performed outside the employment relationship applicable to those agreements. This includes provisions on working time, breaks at work, rest time, night work, minimum wage etc.

## Changes in Compensation in the Case of Invalid Termination of an Employment Relationship

The Amendment substantially increases the compensation to be paid to the employee in the case of invalid notice of termination to an employee or termination of the employment relationship in an invalid manner with the employee immediately or within a probationary period. Under the current Labor Code if the overall time for which an employee should be paid compensation is longer than nine months, the employee is entitled to compensation for a period of nine months. Under the Amendment the employee is entitled to compensation for a period of up to 36 months. However, under the Amendment if the overall time for which the compensation is to be paid is more than 12 months, the court can, based on an application filed by the employer, proportionally reduce the compensation with respect to a period exceeding 12 months or not award the compensation at all.

Should you have any questions regarding the proposed legislative changes introduced by the Amendment or prefer an overview of changes tailored to the needs of your company, please do not hesitate to contact us.

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The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

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