

Act No. 14/2015 Coll. on changing the Act No. 311/2001 Coll. the Labor Code is a government-proposed amendment which has been passed by parliament regardless of the strong protests of employers and the President's veto.

The amendment is a real game changer when it comes to temporary allocation of employees, so called "personal leasing". The most important changes include the introduction of prohibition of temporary allocation for performance of hazardous labor, introduction of presumption of temporary allocation and prohibition of chaining of temporary allocations, introduction of maximal length of temporary allocation, establishment of the employment relationship *ex lege*, and introduction of joint-responsibility of the agency of temporary work, employer, and user employer. Another significant change is that the definition of "dependent labor" has been changed.

Change of the Definition of Dependent Labor

Pursuant to previous wording of the Labor Code, "dependent labor", i.e., the labor conduct of which regulated by the Labor Code – has been defined as "*work carried out in a relation where the employer is superior and the employee is subordinate, and in which the employee carries out work personally for the employer, according to the employer's instructions, in the employer's name, during working time set by the employer for a wage or remuneration.*" The amendment lets out performance of work 'for wage or remuneration' as one of the determinants of dependent labor. According to the government which proposed the amendment, this change was motivated by the problems of practical application of law, as during the labor inspections it has been difficult to prove that the work was performed work for wage or remuneration. This led to one of the conditions of illegal employment not being fulfilled. Now, it will therefore not be necessary to prove that the work was performed for consideration.

Change of Conditions of Temporary Allocation

The amendment prevents the temporary allocation of employee right after entering into an employment relationship. As of 1 March 2015, the employer can agree on temporary allocation of employer only in cases where there are objective operational reasons, but not sooner than three months after the beginning of employment.

Introduction of the Definition of "User Employer"

With the amendment, the definition of "user employer" has been introduced to the Labor Code. This term has been present in the previous legislation, but its definition was absent. Pursuant to the amendment, the user employer is a legal person or natural person to whom the employer or the agency of temporary employment shall allocate an employee under employment agreement.

The term of "agency of temporary work" is defined in Art. 29(1) of Act no. 5/2004 Coll. on Employment Services and on amendment of certain acts, as amended. According to this Act, agency of temporary work is a legal person or natural person, which employs a citizen in an employment relationship for the purpose of his temporary allocation to the user employer on the territory of the Slovak Republic, for performance of work under his supervision and direction, or for the purpose of his posting according to the Labor Code.

Introduction of Prohibition of Sending Temporary Employee on Business Trip by the Agency

The amendment has excluded the option for an agency of temporary work to send the employee on a business trip. Now only the user employer will be able to send the employee on a business trip during the temporary allocation at this user employer. According to the government, the rationale behind this change is aspiration to prevent performance of fictitious business trips by the agencies.

Introduction of Prohibition of Temporary Allocation for Performance of Hazardous Labor

The amendment introduces a ban on temporary allocation of employees for works that the relevant Public Health Authority classified within the Category 4 works, i.e., hazardous works. These are, for example, works with regard to which it is not possible to reduce the exposure of employee to factors of work and working environment by technical and organizational measures to the level of approved limits and the exposure exceeds these limits, but also, for example, works performed by activities leading to irradiation, in which exposure of workers exceeds the exposure limits.

Presumption of Temporary Allocation and the Ban on Chaining of Temporary Allocations

The amendment introduces the concept of presumption of temporary allocation. According to its wording of amendment, unless the employer or agency of temporary work prove otherwise, the performance of labor by an employee, through which the employer or agency of temporary work performs an activity for a physical person or legal person, is also deemed "temporary allocation", if (i) such legal person or physical person assigns work tasks to the employee, organizes, manages and gives him instructions for this purpose; (ii) this activity takes place predominantly in the premises of legal person or physical person and primarily with its work equipment, or such activity takes place predominantly on legal or physical person's or legal person's equipment; and (iii) the activity in question is registered among the business activities of the legal or natural person in the relevant register.

Purpose of implementing this legislation to the Labor Code is, in the government's opinion, the prevention of circumvention of the provisions on comparable working and salary conditions of temporary allocated employees in comparison to condition of so called "core employees" of the employer. According to the government, situations occurred where the provisions regarding the comparable conditions were circumvented via fictitious provisioning of services by persons who according to the contracts did not provide employees but a service. However, according to the government, the subject matter of these contracts was provision of employees for performance of activities which were among business activities of such hidden temporary employer and these employees were directly managed by such employer.

For the establishment of the presumption of temporary allocation it is necessary for all three conditions above to be fulfilled simultaneously. In order to lower the risk connected with this legislation, we recommend the employers erase from their scope of business registered in the Commercial Register any activities that are not necessary for performance of their business.

The amendment also prohibits chaining of temporary allocations of employees. As of 1 March 2015 the user employer cannot temporarily allocate an employee which has been allocated to him for performance of work to another user employer.

Limitation of Duration of Employment with Agency Employee with the Date

Now, in case the agency of temporary work concludes with an employee an employment agreement for the definite period of time, the duration of such employment relationship must be determined by a specific date of termination. The arrangement that was accepted under previous law – that by termination of temporary allocation the employment relationship for definite period terminates – has been beneficial for employers, especially in cases of seasonal works and peak load works, but is not possible anymore.

This rule does not apply with respect to the temporary allocations for the purpose of substitution of an employee during maternity leave, parental leave, leave immediately linked to maternity leave or parental leave, temporary incapacity for work or long term leave for performance of a public function or trade union function. In these cases, the duration does not have to be limited by a specific date.

Introduction of a Maximum Duration of Temporary Allocation

Pursuant to the amendment the temporary allocation can be agreed upon up to maximum of 24 months. Temporary allocation to the same user employer can be prolonged or renewed at most four times within this 24 months period. The same applies in case of temporary allocation of the employee by other employer or other agency of temporary work to the same user employer.

The amendment defines the renewed temporary allocation as an allocation by which the employee should be allocated to the same user employer before the lapse of four or six months of the end of previous temporary allocation. With respect to some temporary allocations, the maximum length limit will not apply (e.g., temporary allocation for the purpose of substitution of an employee during maternity leave, parental leave, and temporary incapacity).

The temporary allocations agreed upon before the amendment came into the force (i.e., before 1 March 2015) will terminate on 28 February 2017 at latest. Temporary allocation renewed by the agency of temporary work in the period from 1 May 2013 to 28 February 2015 counts in the number of renewed temporary allocations. There are also exceptions to this rule.

Introduction of Establishment of Employment *Ex Lege*

In cases of breach of provisions regarding maximum duration of temporary allocation, or of its prolongation and renewal, the employment relationship between employee and employer or agency of temporary work terminates *ex lege* and a new employment relationship for indefinite period is established between the employee and user employer. For this new employment, conditions of an agreement on temporary allocation or employment agreement between the employee and agency of temporary work will apply accordingly.

In such cases, the user employer as a new employer is obliged to issue a confirmation of establishment of such employment relationship within five days after its commencement at the latest.

Introduction of Joint Responsibility of Employer, Agency and User Employer

Another new, and very negatively accepted, rule brought by the amendment is the principle of joint responsibility of user employer, employer and agency of temporary employment for fulfilling the duties regarding the employee's salary conditions. Amendment introduces the rule according to which in case that the employer or agency of temporary work did not provide employee with compensation at least equally favorable as compensation to which a comparable employee of the user employer is entitled to, the user employer is obliged within 15 days from pay day, agreed between the employer or agency for temporary work and temporary allocated employee, to provide the temporary allocated employee with at least equally favorable compensation or difference between the salary of a comparable employee of the user employer and salary which was provided to the temporary allocated employee by the employer or agency for temporary work. In this case, the obligation for making statutory deductions lies on the user employer.

The amendment requires the user employer to inform the employer or agency of temporary employment on the amount of compensation provided to the temporary allocated employee.

The principle above applies also to an user employer to whom an employee has been posted for the performance of work by an employer or an agency of temporary work from another EU member state to Slovak Republic.

New Filing Duties of User Employers and Obligation to Provide Data

The amendment introduced new filing duties for user employers. Now, user employers are required to file information on temporarily allocated employees – these must contain the identification data of the employee, identification data of the employer or agency of temporary work which temporarily allocated the employee and the date of commencement and termination of the temporary allocation.

The employer and the agency of temporary work are also required to, upon request and without delay, provide the user employer with data necessary for overseeing whether the employer or agency for temporary work fulfil with respect to employees allocated to user employer their obligation to provide them with salary conditions at least as favorable as those of comparable employees of the user employer. The employer and agency of temporary work are also obliged to provide the data necessary for fulfilment of the obligation to pay or pay off equally favorable compensation as mentioned above. Personal data of temporarily allocated employees is provided in the extent necessary to fulfil the aims above.

Adding a New Reason of Notice Given by Employer

With the effect of 1 September 2015, the amendment adds one new reason of notice given by employer.

An employer, who is an agency of temporary work, will be allowed to give a notice to an employee if this employee becomes redundant as a result of termination of temporary allocation prior to the lapse of period for which the employment relationship was agreed to. So, if the agency will not have work for an employee, the agency will be able to terminate the employment by a notice.

Should you have any questions regarding other legislative changes introduced by this amendment or prefer an overview of obligations introduced by the amendment, tailored to the needs of your company, please do not hesitate to contact us at any time.

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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