

At the end of last year, the Slovak parliament adopted a new act titled Cross-border Cooperation in Posting Employees (in the Collection of Laws of the Slovak Republic under number 351/2015).

The Act comes into force on **18 June 2016** – the final day for EU Member States to implement Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (the “IMI Regulation”).

Even though the adopted act *a priori* provides for, in particular, cooperation between individual Member States in the field of cross-border posting of employees, it also brings certain changes which will directly affect employers that are posting and/or recruiting employees within EU.

Under the regulations, foreign employers (based in another EU Member State) that post employees to the territory of the Slovak Republic (so-called host employer) must meet the following obligations:

Prior to posting or not later than on the day of posting:

- Notify the Slovak National Labor Inspectorate of specific data stipulated by law (employer identification data, posted employee data and details on the posting, date of commencement and end of posting, etc.).
- Designate a contact person, i.e., a person in the territory of the Slovak Republic, authorized for delivery of documents and decisions, which must be present throughout the period of posting in the territory of the Slovak Republic.

During posting at the place of performance of work of the posted employee:

- Maintain documents regarding posted employees (employment contract or other document regarding the labor-law relationship and documents regarding wages paid during posting).
- Maintain and keep the records of working time of the posted employee.

Upon request of the labor inspectorate (*ad hoc*):

- Present and deliver relevant documents specified above to the inspectorate, and if necessary, present a translation in the Slovak language. Documents may also have to be presented upon completion of the posting.

Where “home employers” (those based in the Slovak Republic) post their employees to the territory of another EU Member State, they must provide information relating to the cross-border posting to the Slovak labor inspectorate, upon request.

The act also enforces the above obligations by imposing administrative penalties or fines up to €200,000, and include the possibility of cross-border enforcement.

Changes to Existing Legislation

The new Act at the same time amends some already existing legal regulations. The main points of these amendments are summarized below.

First, a change to the Labor Code introduces a joint liability of a service contractor in the Slovak Republic for non-payment of wages to an employee of the subcontractor (“host employee”). The new regulation implies that if, for example, the host employer does not pay the employee’s wages in full or part, they must be paid by the Slovak contractor within 15 days from delivery of the request of the host employee. However, the rule will apply **exclusively to the cases** where the host employer is a **direct** subcontractor of the Slovak contractor. This joint liability means that a claim may be asserted by the employee towards the Slovak contractor in a court in the Slovak Republic and, thus, there may be no need to enforce their claim in other Member State.

If Slovak contractors have such contractual structure, they should provide for rights of regress in contracts with their foreign subcontractors in case such a situation occurs (i.e., if the employee successfully asserts an entitlement to wages or part thereof).

The Labor Code, in the light of the amendment, also contains a new provision which indicates that in case of posting a home employee to another EU Member State, their terms and conditions of employment shall be governed by law of the state to which they are posted. For this purpose, the home employer **is obliged** to inform the employee **prior to the posting** of the terms and conditions of employment. In addition, the information of working time and assessment of vacation must be notified to the employee **in writing**. The introduction of this obligation means, practically speaking, that Slovak employers will need a detailed and concrete knowledge of conditions of work in the countries to which they post their employees, as well as of any potential changes.

We therefore **recommend** that Slovak employers that post their employees to other EU Member States on a regular basis find out the information on terms and conditions of employment in the stated EU Member States.

It is unclear how deeply the Slovak National Labor Inspectorate will address this issue, particularly where the information in languages other than Slovak language seems limited. Guidance is so far only available in English on the [NIP website](#). For now, a foreign employer wanting to post an employee to the territory of the Slovak Republic will currently need translate the information on terms and conditions of employment in the Slovak Republic at their own cost, unless they have a strong command of English.

The Slovak National Labor Inspectorate has created an application through which foreign employers will be able to notify the inspectorate of all above-mentioned obligations requested by law. The application should be made available from 18 June 2016, and can be accessed through the [NIP website](#).

In the future it would be practical for Member States to mutually cooperate in this field to ensure the helpful sharing of information. For example, the Slovak National Labor Inspectorate could provide a Slovak employer with basic information on terms and conditions of employment in other EU Member States. This would help the employer to more easily perform its obligations and protect itself against any excessive administrative burden it may face.