



Information for clients No. 1

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Tightening of Cross-border Posting Legislation

In connection with the obligation of the Slovak Republic to transpose into national law European Directive No. 2014/67/EU, in June 2016 new Act No. 351/2015 Coll. on Cross-border Cooperation in Posting of Workers entered into effect. The Act aims to prevent the abuse of posting in order to evade Slovak labour law, establish administrative requirements for posting employers, and deepen cooperation between control authorities across the EU in the form of information sharing, control activities, service of documents, and recovery of fines and penalties.

The legislative changes relate not only to employers, but also to their business partners. We have prepared an overview of the most important duties resulting from this Act.

Which situations come under the new regulations?

The new obligations apply to the posting of workers for the purpose of the cross-border provision of services. In the context of the Directive, a 'posting' means:

- a posting under the direction and on the account of the posting employer under a contract between the posting employer as a cross-border service provider and the recipient of services,
- a so-called intra-group posting, i.e. a posting between affiliated entities,
- temporary hiring-out to a user employer, whereby during the period of the posting the employment

relationship between the posting employer and the worker must persist.

Labour law applicable during the posting

New administrative obligations of employers and mechanisms for cooperation between competent authorities of the EU Member States should enable more efficient monitoring of the already long-term existent minimum standard working conditions for workers posted across borders.



Primarily, the law of the State of establishment governs employment relations between the posted worker and the posting employer. However, as far as it is more favourable to the worker, the so-called hardcore law of the country, to which he or she is posted, governs such relations. This concerns in particular the provisions governing hours of work and rest periods, length of holiday, minimum wage,



wage for overtime, and health and safety at work. Special provisions apply to employment by temporary work agencies.

The monitoring will, therefore, also be focused on the question whether the activity of the posted worker in the Slovak Republic has the characteristics of a posting, in particular whether:

- the activities of the foreign employer in its state of establishment are not limited only to internal management or administrative activities, i.e. whether it performs its core business there, and
- the posted worker works regularly in another Member State and his or her work performance in the Slovak Republic is only temporary.

Obligations when posting from the Slovak Republic to the EU

A domestic employer may send a domestic worker to perform work on the territory of another EU State only on the basis of a written agreement concluded with such worker. Such an agreement must contain the date of commencement and termination of the posting, the type and place of work, and the wage conditions during the posting.

Since the law of the Member State where the domestic



worker is posted is decisive, it is essential that the employer inquires and applies the mandatory minimum standards applicable in the given country. The employer must inform the worker about any differences in the conditions of employment during the period of the posting, whereby the working time and length of holiday

must be determined in writing.

Obligations when posting from the EU to the Slovak Republic

A foreign employer that sends its workers to the Slovak Republic in order to provide services (hereinafter referred to as "foreign employer") is obliged to:

- notify, on the date of the posting at the latest, the National Labour Inspectorate of its identification data, estimated number of posted workers, identification personal data of those workers, date of commencement and termination of the posting, place of work and type of work of the workers in the Slovak Republic, identification of services provided, and the name, surname and Slovak address of the contact person to whom documents should be delivered and who will be located in Slovakia during the time of the posting,
- retain the employment contract or other document confirming the employment relationship with the posted worker and the record of wage paid for the work performed during the posting in the place of the posting,
- administer and retain, in the place of the posting, the records of working time maintained in accordance with Slovak law,
- present or deliver the aforementioned documents to the Labour Inspectorate at its request, even after the termination of the posting, including translation into Slovak.

Should the posted worker believe that a violation of his or her labour-law claims occurred at the time of the posting in the Slovak Republic, he or she may appeal to the competent labour inspection authority or a court.

The Labour Inspectorate is authorised to impose a fine of up to EUR 100,000 on a foreign employer for a breach of its obligations.

Obligations also impact business partners

Act No. 82/2005 Coll. on Illegal Work and Illegal Employment has also been amended. Liability for violation of the Act currently extends from the illegally employing service providers also to their customers, provided such are entrepreneurs. The customer is at risk of being fined from EUR 2,000 to EUR 200,000 for the receipt of cross-border services in the extent of at least 5 days over



a 12-month period, or for the receipt of national or cross-border supply of labour provided by an illegally employed individual. According to the current interpretation, an example of such illegal employment is a situation when the employer does not dispose of A1 certificates for posted workers documenting their participation in a social system abroad. The service provider is obliged to immediately provide the customer upon request with the documents and personal data of individuals by means of whom it delivers the work or services.

At risk may also be a customer that is also a supplier of services in the Slovak Republic. Assuming that its direct subcontractor – the foreign employer – does not pay wage or any part thereof to the posted worker, such worker may recover it from such customer.

Conclusion

Since the above changes result from legislative measures at the EU level, the

strengthening of posting conditions has occurred or will also occur in other Member States. Even more rigorous monitoring and cross-border cooperation between competent authorities can be expected.

We recommend you to check the conditions of the current activities of your workers abroad, as well as any potential risks that have an impact on you as consumers of cross-border services in the Slovak Republic. For new cross-border contracts, we recommend the early identification and taking into account of all labour-law consequences, as well as contractually underpinning the impacts of potential violations of the Act by a supplier. We also draw your particular attention to the consequences in the area of tax and social insurance embedded in cross-border activities.

We look forward to assisting you in these issues.



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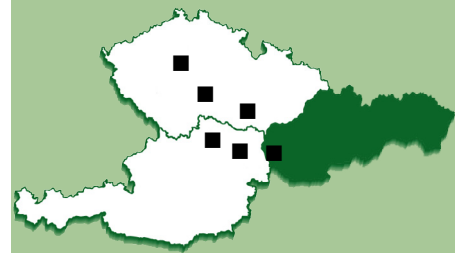


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