

## New employment contract

Labour Code Amendment 2022, Slovakia

*1 November 2022*

The elements of the employment contract will be further regulated under Section 43 of the Labour Code. **However, in connection with the amendment, the relevant provision of Section 43 of the Labour Code is modified, as well as a new provision of Section 44 of the Labour Code is introduced.**

The previous wording of Section 43 of the Labour Code regulated the so-called essential elements of the employment contract (paragraph 1), the regular elements of the employment contract (paragraph 2) and the so-called incidental elements of the employment contract (paragraph 3). In connection with the transposition of the Directive and the not fully defined link between Section 43 of the Labour Code (content of the employment contract) and Section 44 of the Labour Code (written information on working conditions) and other provisions of the Labour Code, the amendment proposed the following clarification of the relevant legislation, namely:

Text in force until 31 October 2022	Version effective from 1 November 2022
<b>§ 43 (untitled) - paragraphs 1, 2, 3</b>	<b>§ 43 Essential elements of an employment contract - paragraphs 1, 2, 3</b>
<p>1 In the employment contract, the employer is obliged to agree with the employee the essential elements, which are:</p> <ul style="list-style-type: none"> <li>a the type of work for which the staff member is recruited and a brief description of it,</li> <li>b the place of work (municipality, part of a municipality or otherwise designated place),</li> <li>c the date of commencement of work,</li> <li>d wage conditions, if not agreed in the collective agreement.</li> </ul>	<p>1 <b>The employment contract shall contain the identification data of the employer and the employee.</b> In the employment contract, the employer shall agree with the employee the essential elements, which are</p> <ul style="list-style-type: none"> <li>a the type of work and its brief characteristics,</li> <li>b the place of work (a municipality, part of a municipality or otherwise designated place) <b>or places of work, if more than one, or the rule that the place of work shall be determined by the employee,</b></li> <li>c the date of commencement of work,</li> <li>d pay conditions.</li> </ul>
<p>2 In addition to the particulars referred to in subsection (1), the employer shall specify in the employment contract other terms and conditions of employment, namely pay periods, hours of</p>	<p>2 Where the wage conditions referred to in paragraph (1)(d) are agreed in a collective agreement, it shall be sufficient to refer in the employment contract to the relevant provisions of the collective agreement, otherwise it shall be</p>

work, the amount of leave and the length of notice. <sup>1</sup>	sufficient to refer to the relevant provisions of this Act or of a special regulation.
3 Where the terms and conditions of employment referred to in paragraph (1)(d) and (2) are agreed in a collective agreement, it shall be sufficient to refer to the provisions of the collective agreement; otherwise it shall be sufficient to refer to the relevant provisions of this Act. If no wage terms are agreed in the employment contract and the provisions of the collective agreement to which the employment contract refers have ceased to have effect, the wage terms agreed in the collective agreement shall be deemed to be the wage terms agreed in the employment contract until new wage terms are agreed in the collective agreement or in the employment contract, for a maximum period of 12 months. <sup>2</sup>	3 If no wage terms are agreed in the employment contract and the provisions of the collective agreement to which the employment contract refers have ceased to have effect, the wage terms agreed in the collective agreement shall be deemed to be the wage terms agreed in the employment contract until new wage terms are agreed in the collective agreement or in the employment contract, but for a maximum period of 12 months.

It is therefore proposed to provide, in accordance with Article 4(2)(a) of the Directive, that the employment contract must contain the identification of the parties (identity of the parties). Further, it will now be compulsory to agree only the general essential elements of the employment contract, as defined in Article 43(1) of the Labour Code, without which the employment contract would not have been concluded.<sup>3</sup>

As regards other terms and conditions of employment, the employer may decide whether to provide them in the form of written information (and, according to the proposed Article 38a of the Labour Code, possibly in the electronic form - see chapter "TRANSPARENCY AND TRANSPARENCY OF WORKING CONDITIONS, INFORMATION OBLIGATIONS AFTER THE NEW"), or to agree on them in the employment contract as additional working conditions.

However, it should be mentioned in this context that in such a case the employer will need the employee's consent to change them. By giving written information, the employer is merely declaring the existence of the terms and conditions of employment which apply to him.

Text in force until 31 October 2022	Version effective from 1 November 2022
<b>§ 43 (untitled) - paragraph 4</b>	<b>(Modified) § 44 Further content of the employment contract</b>
4 The employment contract may agree other terms and conditions in which the parties are interested, in particular other material benefits.	1 Additional terms and conditions of interest to the employer and the employee, in particular other

<sup>1</sup>This paragraph is deleted from the Labour Code by the amendment.

<sup>2</sup> This paragraph is split into two separate paragraphs by the amendment.

<sup>3</sup> At the same time, it should be taken into account that there are specific essential elements of a particular form of work (e.g. for a certain period of time - Section 48 of the Labour Code includes the expression of a certain period of time, for shorter working hours - Section 49 of the Labour Code it is the expression of shorter working hours, etc.) - without them, such a form of work would not have come into existence. This is without prejudice to the fact that special regulations may provide for other mandatory components of the employment contract for specific groups of employees.

Provisions of an employment contract or other agreement by which an employee undertakes to keep confidential his or her working conditions, including wages and conditions of employment, shall be null and void.

material benefits, may be agreed in the employment contract.

- 2 The provisions of an employment contract or other agreement between the employer and the employee are invalid,
  - a by which the employee undertakes to maintain confidentiality about his or her working conditions, including pay and conditions of employment,
  - b which prohibit the employee from engaging in other gainful activity outside the working hours specified by the employer; this is without prejudice to the restriction on other gainful activity pursuant to Section 83 of the Labour Code or pursuant to special regulations.**

The new Section 44 of the Labour Code defines, in addition to the original prohibition of confidentiality of employees' working conditions, another provision of the employment contract, the negotiation of which results in the invalidity of such an arrangement, namely **the prohibition of restriction of employees' gainful activity outside the specified working hours**. The reason for this change is directly based on the wording of point 29 of the introductory provisions of the Directive, according to which an employer should not prohibit employees from being employed by another employer outside the working time schedule set by that employer, nor disadvantage employees in any way because of this.

## WHAT WILL THESE CHANGES BRING TO YOUR PRACTICE?

### EXISTING EMPLOYMENT CONTRACTS/CURRENT STAFF

Under the transitional provision of Section 252s of the Labour Code, it will not be necessary to amend or supplement the employer's existing employment contracts in this context. However, if an existing employee expressly requests the employer to supplement the information to which he/she is newly entitled (and which is not contained in his/her existing employment contract), the employer will be obliged to do so within one month of the employee's request.

We also point out that in the context of the amended Article 44 of the Labour Code, which provides for the prohibition of the employer to prevent the employee from performing other gainful activities outside the working hours determined by the employer, any provisions of existing employment contracts containing such a prohibition will, in our opinion, automatically be invalid.

### NEW EMPLOYMENT CONTRACTS/NEW STAFF

In practice, the above will have an impact on the content of newly concluded employment contracts in the sense that they will be obliged to contain only the so-called essential elements according to the new § 43 (1) of the Labour Code (and some special ones - the mentioned § 48 and § 49 of the Labour Code). Other terms and conditions of employment may be provided by the employer to the employee "outside the employment contract" in writing (also electronically), which means that any change in the employee's terms and conditions of employment will no longer need to be modified with the employee's consent in the form of an amendment to the existing employment contract. In particular, if the employer thus communicates the new terms and conditions of employment electronically, changes to terms and conditions of employment will, in our view, occur much more flexibly.

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