

New rules for probation

Labour Code Amendment 2022, Slovakia

1 November 2022

Despite the fact that the probationary period is not one of the mandatory elements of the employment contract, most employers, mainly for reasons of prudence and practicality, approach its unconditional negotiation in the employment contract. The probationary period remains regulated under Article 45 of the Labour Code.

In the context of the transposition of Article 8(2) of the Directive, the following rule is proposed to be taken into account in the context of the regulation of probationary periods: ***'In the case of fixed-term employment relationships, Member States shall ensure that the length of such probationary periods is proportionate to the foreseeable duration of the contract and the nature of the work. In the event of renewal of a contract for the same post and the same tasks, the employment relationship shall not be subject to a new probationary period.'***

Taking the above into account, the amendment introduces the following changes in the legislation in question:

Text in force until 31 October 2022	Version effective from 1 November 2022
§ 45 Probationary period	§ 45 Probationary period
<p>1 A probationary period of not more than 3 months may be agreed in the employment contract and, in the case of a senior employee under the direct management authority of a statutory body or a member of a statutory body and a senior employee who is under the direct management authority of that senior employee, shall be not more than 6 months. The probationary period may not be extended.</p> <p>2 If the employee has not worked the entire work shift during the agreed probationary period due to an obstacle to work on his/her part, the probationary period shall be extended by one day.</p> <p>3 The probationary period must be agreed in writing, otherwise it is null and void.</p> <p>4 A probationary period may not be agreed in the case of fixed-term re-employment.</p>	<p>1 A probationary period of not more than 3 months may be agreed in the employment contract and, in the case of a senior employee under the direct management authority of a statutory body or a member of a statutory body and a senior employee who is under the direct management authority of that senior employee, shall be not more than 6 months. The probationary period may not be extended.</p> <p>2 In the case of an employee with a fixed-term employment relationship, the agreed probationary period may not be longer than half of the agreed duration of the employment relationship; paragraph (1) shall not be affected thereby.</p> <p>3 If the employee has not worked the entire work shift during the agreed probationary period due to an obstacle to work on his/her part, the probationary period shall be extended by one day.</p>

- 4 The probationary period must be agreed in writing, otherwise it is null and void.
- 5 A probationary period may not be agreed in the case of fixed-term re-employment.

The change in the legal regulation of the probationary period is therefore significant in the context of fixed-term employment, where, in the spirit of the transposed Directive, it is necessary for the **employer to set the length of the probationary period in proportion to the duration of the employment relationship so negotiated. As regards the principle expressed in the Directive that the probationary period may not be renegotiated in the event of a renewal of the contract, we consider that this has long been reflected in the Labour Code under Article 45(1) (last sentence) of the Labour Code.**

WHAT WILL THESE CHANGES BRING TO YOUR PRACTICE?

EXISTING EMPLOYMENT CONTRACTS/CURRENT STAFF

In the context of existing employment contracts, and more specifically in the context of existing fixed-term employment contracts under which the originally agreed probationary period is currently running (has not expired), we consider that it is in the interests of preserving legal certainty that the originally agreed probationary period (i.e. the probationary period agreed between the employer and the employee in the employment contract prior to the amendment coming into force) will run out in time or last for the period agreed between the employer and the employee in the employment contract. However, we accept that, in view of the newly introduced principle of the proportionality of probationary periods in fixed-term employment relationships, the probationary period originally agreed could, in the spirit of that principle, be modified by agreement of both parties.

NEW EMPLOYMENT CONTRACTS/NEW STAFF

These changes will only affect fixed-term employment contracts. As before, the probationary period and its duration will have to be agreed in the employment contract, while, as was the case before, it will not be compulsory to agree on a probationary period at all. This means that if the employer does not want or need to negotiate a probationary period with the employee for any reason, they do not have to do so in the employment contract.

However, if it is in the employee's interest to agree a probationary period and it is a fixed-term employment relationship, the employer must be careful when setting the probationary period. If, for example, an employment contract is concluded for a period of less than 12 months, it will be appropriate to shorten the probationary period in a proportionate manner in light of the new legislation. In practice, it is usual for employers to agree the maximum possible probationary period with new employees. Now the 'maximum possible extent' will be limited by the requirement of reasonableness. Although it is only a matter of time before the courts clarify in their decision-making practice how they conceive of this reasonableness, we believe that in the case of an employment relationship of, for example, 3 months, there will be no probationary period or only a few days. In the case of a 6-month employment relationship, a probationary period of 6 weeks, etc. can be roughly envisaged.

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