Bird & Bird

Transition and rules on minimum predictability of work

Labour Code Amendment 2022, Slovakia

1 November 2022

The amendment in question **also introduces two completely new labour law institutions** into the Labour Code, namely the:

- transition to another form of employment and
- minimum predictability of work.

Transition to another form of employment

As regards the issue of transition to another form of employment, this is regulated by the amended provision of Section 49b of the Labour Code. The purpose of this new legislation is to provide employees working in so-called atypical forms of employment with the possibility of a "more secure form of employment", which is also aimed at strengthening the protection of employees' social rights.

This changeover **specifically applies to those employees who have a fixed-term contract with their employer or to those employees who are employed on a part-time basis**. If the employment relationship of these employees has lasted more than six months and the probationary period (if agreed) has expired, these employees may apply to switch to an open-ended or fixed-week employment relationship. It should be noted here that the duration of the previous employment relationship is also included in the total duration of the fixed-term employment relationship if the employment relationship is a fixed-term employment relationship that has been renegotiated.

However, if such a request is made, the employer is not automatically obliged to comply with it. Importantly, the employer is obliged to respond to such a request within one month of the request being made, and the response must be in writing and substantiated. Consequently, the employer is also obliged to respond in this way to the employee's next request if it is made after the expiry of 12 months from the previous request. If the employee makes the same request earlier, the employer shall not be obliged to respond to it.

However, the new legislation specifically takes into account smaller employers, i.e. those who are natural persons and those who employ less than 50 employees. These groups of employers will be subject to less stringent rules, i.e. the time limit for a written and reasoned response to an employee's request to switch to another form of employment is up to three months, and a verbal response from the employer will suffice when the request is resubmitted, provided that the reasoning for the response has not changed.

We would also like to point out that this new legislation has been supplemented by an amendment to the effect that an employee who is permanently caring for a child under the age of eight can also apply for a change of form of employment. The new legislation is intended to give them the possibility to apply for work

in the form of homeworking, teleworking or home-based work. The employer is obliged to handle such a request. If the employer does not comply within a reasonable period of time, it must give reasons for its decision in writing and provide it to the employee concerned in the form of a reply.

This new rule also applies to an employee who is personally caring for a close person who is mostly or totally unconscious and is not receiving care in a social services or residential care in a health care facility.

Minimum predictability of work

The second novelty in Slovak labour law is the so-called **minimum predictability of work rules regulated in the new provision of Section 223a of the Labour Code, which will supplement the legal regulation of agreements on work performed outside the employment relationship.** The aim of these newly introduced rules is to increase the transparency and predictability of work in employment relationships where the organisation of work is partially or completely unpredictable.

The basic rule when concluding any agreement on work performed outside the employment relationship (including an agreement on temporary work for students) will be the employer's obligation to inform the employee of the days and periods during which the employer may require the employee to perform the work and the period of time within which the employee will be informed of the performance of the work prior to the commencement of the work. That period shall not be less than 24 hours. Such information must be given to the employee in writing (i.e. in paper or electronic form). Where such information changes, the employer shall be obliged to notify the employee no later than the day on which it takes effect, and in writing as well.

The protection of the employee which is **actually sought by the introduction of the rules in question is evident from the provision that if the employer requires the employee to perform work in contravention of the information provided in writing and referred to above, the employee is not obliged to perform that work. In addition, the protection of the employee is strengthened by the fact that if the employer cancels the performance of the work in less than 24 hours, or if the changes in the conditions are notified later than the effective date, the employee is entitled to a refund of the remuneration he/she would have received if the work had been performed, at least 30% of the remuneration**.

On the other hand, however, it should be noted that in certain situations the rules on minimum predictability of work do not apply. This is the case in particular where the beginning and end of working time and the timetable for working shifts are determined by the employer in agreement with the employees' representatives within the meaning of Article 90(4) and (9) of the Labour Code. An exception is also where the employer agrees with the employee to schedule his/her working time himself. Finally, the above rules do not apply to employees whose average weekly working time does not exceed three hours in a four-week reference period.

Text in force until 31 October 2022	Version effective from 1 November 2022
	(New) § 49b - Transition to another form of employment
The Labour Code has not yet regulated this institution of transition to another form of employment.	1 An employer shall be obliged to provide an employee with a fixed-term or part-time employment relationship whose employment relationship lasts more than six months and whose probationary period, if agreed, has expired, with a reasoned written response to his or her request to switch to an indefinite-term or fixed-week employment relationship within one month of the date of the request; this shall also apply to any further request made by the employee not earlier than 12 months after the previous request. An employer who is a natural person and an employer who employs fewer than 50 employees shall respond to a request

	under the first sentence within 3 months of the date of receipt of the request at the latest and may provide a verbal response to a repeated request if the reasons for the response have not changed. 2 For the purposes of subsection (1), the duration of a fixed-term employment relationship shall include the duration of the previous employment relationship if the employment relationship is a fixed-term employment relationship that has been renegotiated.
	(New) Section 164(3) - Transfer to another form of employment of an employee who is permanently caring for a child
This institution of transition to another form of employment of an employee who permanently takes care of a child has not been regulated in the Labour Code so far.	3 Where a woman or man permanently caring for a child under the age of eight years requests domestic work, telework or work from home under section 52(2) for the purpose of caring for the child, the employer shall provide them with a reasoned response in writing if the employer has not complied with their request within a reasonable period of time. In considering the request, the employer shall have regard to its tasks and the legitimate interests of the employee.
	§ 165 - Transition to another form of employment of an employee who is personally caring for a close, partially or wholly uncontrolled person In § 165, a reference to § 164(3) is added.
	(New) § 223a - Minimum predictability of work
Such legislation has not yet been included in the Labour Code. This institution of minimum predictability of work has not yet been regulated in the Labour Code.	1 An employer shall provide an employee, when concluding a work performance agreement, a student temporary work agreement or a work activity agreement, with written information on: a the days and periods of time during which the employee may be required to work, b the period within which the employee is to be informed of the performance of the work prior to its commencement, which shall not be less than 24 hours. 2 An employer shall, when changing the data referred to in paragraph (1), provide the employee with written information about the changed data no later than the day on which the change takes effect. 3 An employee shall not be required to perform work if the employer requires the employee to perform work in contravention of the written information under subsections (1) and (2). 4 If the employer cancels the work within a period which is shorter than the period notified under paragraph (1)(b) or paragraph (2), the employee shall be entitled to compensation for the

remuneration which he/she would have earned if the work had been carried out, in an amount not less than 30 percent of the remuneration.

5 Paragraphs (1) to (4) shall not apply if:

a the employer shall proceed in accordance with section 90(4) and (9),

b the employer agrees with the employee that the employee schedules his or her own working time; or

c the average weekly working time does not exceed three hours over a period of four consecutive weeks.

WHAT WILL THESE CHANGES BRING TO YOUR PRACTICE?

EXISTING EMPLOYMENT CONTRACTS/CURRENT STAFF

In light of the promotion of the key principles of predictability and transparency of the employer's terms and conditions of employment, which are to be applied as far as possible also to existing employment relationships, we consider that the new legislation will be fully relevant from the effective date also in the context of ongoing employment relationships. If the content of an existing employment contract contradicts this new legislation in any way, we recommend that the wording of this existing employment contract be consolidated in the spirit of the new legislation by means of a written amendment to this existing employment contract.

NEW EMPLOYMENT CONTRACTS/NEW STAFF

In the context of the new employment contracts, it will be essential for the employer to keep this new legislation in mind, and it is neither necessary nor mandatory that the terms of these new institutions are in any way explicitly supplemented in the new employment contracts. In the context of these new institutions, the employer may wish to consider regulating the specific conditions, such as the model of the employee's request for a transfer, the time limits for informing the employees, as well as the possible compensation of remuneration, in its internal regulations (even more favourably than the statutory regulation).

At the same time, in our opinion, employers will have to gradually resolve the application of the new legislation from a technical point of view also. At present, it seems easier to notify by electronic means - for this purpose, it is worth considering, for example, automated information to employees, etc.