

The possibility for an employer to post an employee in the framework of the cross-border provision of services to another EU member state

Labour Code Amendment 2022, Slovakia

1 November 2022

Due to chronological misplacement and of course primarily due to the transposition of the Directive, the Labour Code has also introduced a new provision, § 54b, which transposes Article 7(2) of the Directive concerning the posting of an employee within the framework of the cross-border provision of services by an employer for the performance of work in another EU Member State. This is a relocation of the legal regulation from § 5 of the Labour Code and an addition in accordance with the requirements resulting from the Directive.

Now, in the case of posting, the **information must be provided only to the extent that there is a change compared to the information received by the employee in the context of Slovak law, i.e. according to § 47a of the Labour Code** (e.g. if the maximum length of the weekly working time is maintained for the employee, the employer is not obliged to inform him/her of this fact again, but it is not excluded that he/she will provide the employee with a comprehensive information). **This information may also be contained in the secondment agreement.**

The amendment also provides for **an exemption from the provision of information** under Article 54b(2)(b) to (d) of the Labour Code if **the period of work or posting in a single case** (i.e. separate periods of stay in another country at a certain time - period - e.g. 3 weeks in January, 3 weeks in November) **does not exceed 4 weeks** (see Article 7(2) of the Directive). **However, this exception does not affect the fact that if, e.g. the applicable law in the case of posting (e.g. German law) implies a change in the working conditions for the employee** (e.g. the employee has to work shorter hours) that the employer **has to inform the employee of this fact**. This means that if they had originally agreed on a posting period of 10 weeks, but for objective reasons it is necessary to reduce this period to a shorter period than required by law (below 4 weeks), this does not mean that the employer would no longer be obliged to inform the employee of the changes in working conditions after the new posting, even though the period has been reduced below the legal limit. The decisive criterion is the period that was originally agreed.

Text in force until 31 October 2022	Version effective from 1 November 2022
<p>§ 5 (untitled) - paragraphs 13, 14 and 15</p>	<p>(New) § 54b - Change of terms and conditions of employment due to posting for the performance of work in the course of the provision of services in the territory of another Member State of the European Union</p>
<p>13 The terms and conditions of employment of a domestic worker shall be governed by the law of the State to the territory of which the domestic worker is posted. The home employer shall inform the home worker of the working conditions and conditions of employment referred to in the first sentence prior to the posting; the information on working hours and the amount of leave shall be communicated in writing to the home worker.</p> <p>14 A domestic employer may send a domestic employee to perform work in the provision of services from the territory of the Slovak Republic to the territory of another Member State of the European Union on the basis of a written agreement. The agreement under the first sentence must contain in particular:</p> <ul style="list-style-type: none"> a the date of commencement and termination of the posting, b the type of work you'll be doing during your secondment, c place of work during secondment, d pay conditions during secondment. <p>15 In the case of a secondment under paragraph (6)(c), the particulars referred to in paragraph (14) shall be contained in the secondment agreement referred to in section 58(5).</p>	<p>1 If a domestic employee is to be posted by a domestic employer for the performance of work in the provision of services from the territory of the Slovak Republic to the territory of another Member State of the European Union, the domestic employer shall conclude a posting agreement with the domestic employee, in which it shall agree, in particular, on:</p> <ul style="list-style-type: none"> a the date of commencement and termination of the posting, b the type of work during the secondment and a brief description of it, c place of work during secondment, d pay conditions during secondment. <p>2 If a domestic employee is to be posted by a domestic employer for the performance of work in the provision of services from the territory of the Slovak Republic to the territory of another Member State of the European Union, the domestic employer shall be obliged to provide the domestic employee with written information at least to the extent of the following data, if they are not contained in the employment contract, the posting agreement pursuant to subsection (1) or the written information pursuant to subsection (1) of section 47a:</p> <ul style="list-style-type: none"> a data on the working and employment conditions applied during the posting pursuant to Section 5(13) to the extent of the data pursuant to Section 47a(1), b details of reimbursement of travel expenses, reimbursement of accommodation and subsistence expenses or other reimbursement of expenses relating to the secondment, c the data referred to in § 44a(2), d a link to the official website published by the Member State of the European Union to whose territory the home worker is posted, which contains information on the terms and conditions of employment applicable to workers posted to its territory.

- 3 The domestic employer shall provide the information referred to in paragraph (2) prior to the commencement of the secondment.**
- 4** A domestic employer may provide the information referred to in paragraph (2)(a) in the form of a reference to the relevant provision of the Act or to the relevant provision of a collective agreement, provided that it is in a language that the employee understands. The information referred to in paragraph 2 need not contain the information referred to in paragraph 2(a) if the posting for the performance of work in the provision of services does not result in a change in the terms and conditions of employment.
- 5 A domestic employer is not required to provide information under paragraph (2)(b) to (d) if the period of posting in any one case does not exceed 4 consecutive weeks.**
- 6 In the case of a secondment pursuant to section 5(6)(c), the particulars referred to in paragraph (1) shall be contained in the secondment agreement referred to in section 58(5).**

WHAT WILL THESE CHANGES BRING TO YOUR PRACTICE?

EXISTING EMPLOYMENT CONTRACTS/CURRENT STAFF

Under the transitional provisions of Section 252s of the Labour Code, it will not be necessary in this context to modify or supplement existing employment contracts concluded with employees who are posted for the performance of work in the provision of services outside the territory of the Slovak Republic in any special way. 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.

NEW EMPLOYMENT CONTRACTS/NEW STAFF

In the context of newly concluded contracts with employees who are to be posted by the employer for the performance of work in the provision of services outside the territory of the Slovak Republic to another Member State of the European Union, the newly added Section 54b of the Labour Code imposes double obligations on the employer, i.e. to conclude a posting agreement, which has the statutory content, and at the same time to implement the so-called information obligation (e.g. about the data relating to travel expenses, about the currency in which the salary will be paid, etc.).

In order to avoid such a "bifurcation" of obligations, in our opinion, it is also advisable, from a practical point of view, to consider that the employer should include all relevant facts and data about which the employee must be informed directly in the secondment agreement itself, thereby automatically fulfilling the so-called information obligation under Section 54b (2) of the Labour Code.

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