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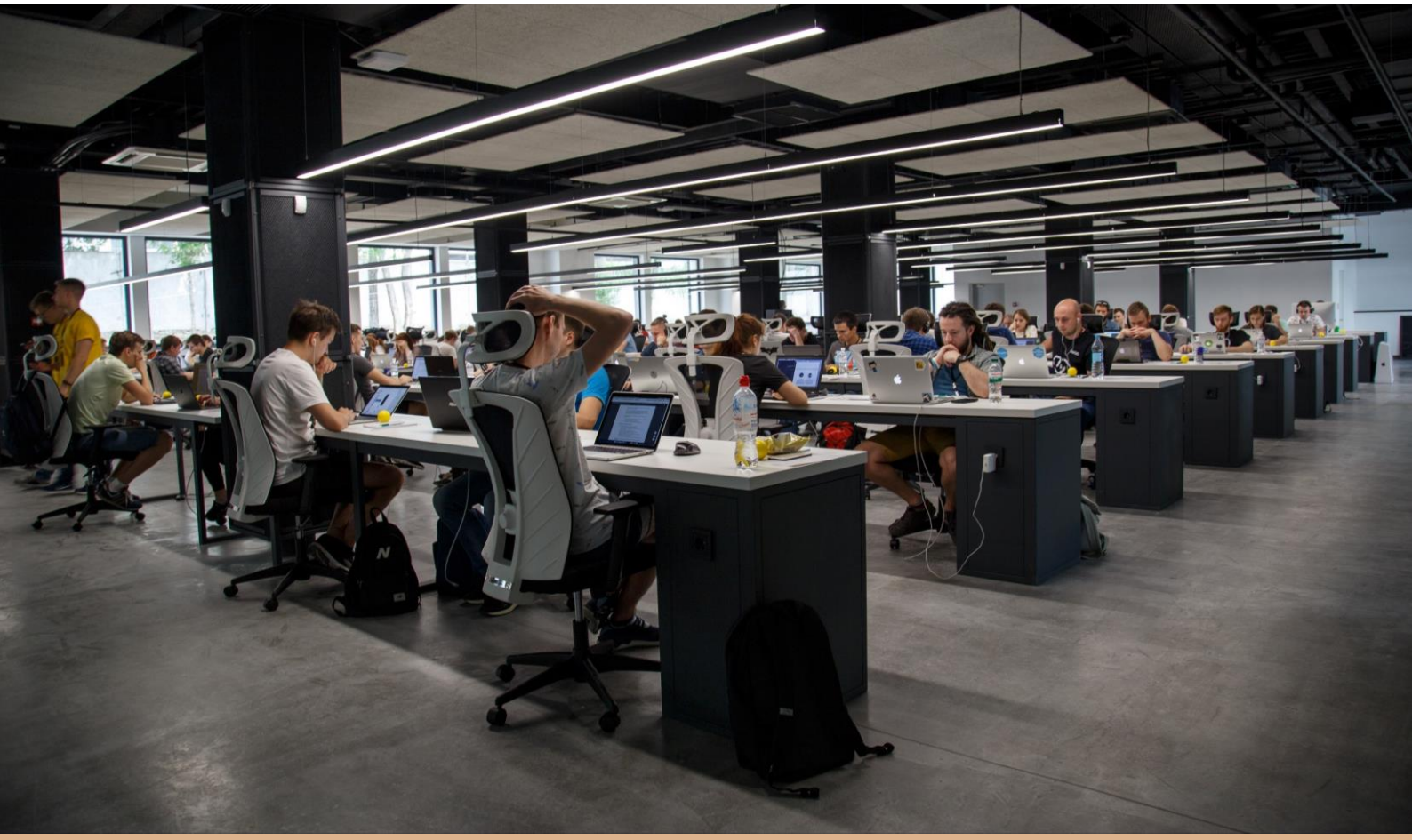

New Labour Code amendment effective as of 1 November 2022 introduces new obligations for employers

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9 December 2022

Ever since adopted, the Labour Code (Act No. 311/2001 Coll.) has been amended more than 60 times. Except for 2016, when no changes were made to the legislation, the Labour Code has seen several amendments each year (on average, three times a year). Most amendments were adopted in 2015 and 2020 (5 amendments).

This year will probably see a record number of amendments, as on 7 December 2022, the parliament passed yet another amendment to the Labour Code, the seventh in a row this year. This latest, seventh amendment, is expected to come into effect on 1 June 2023 and its aim is to increase the pay for employees working weekends and nights.

The fifth amendment to the Labour Code passed in 2022 (in the form of Act No. 350/2022 Coll. adopted by the Slovak National Council on 4 October 2022) has been so far the most extensive amendment this year. It comes into effect on 1 November 2022 and introduces several changes and new obligations for employers. These were necessary because of the transposition and implementation of EU legislation, namely the two directives below:

- Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (OJ EU L 186, 11.7.2019).
- Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ EU L 188, 12.7.2019).

The purpose of this amendment is to increase transparency and predictability of the working conditions within the European Union and improve the work-life balance of parents and carers. Apart from the Labour Code amendment, the EU legislation required the amendment of several other adjacent legal regulations (in the area of social security, parental allowance, civil servants, etc.).

Although numerous provisions of said directives have already been reflected in the previous versions of the Slovak Labour Code and have been in place to a certain extent, the latest amendment introduces more changes and innovations, such as:

1. New elements of work contracts

The amendment preserves the **four major elements that must be contained in work contracts** in more or less the same form:

(i) Type of work and a brief work description,

(ii) Place of work,

(iii) Work start date, and

(iv) Salary conditions.

When it comes to the place of work, the amendment specifies that the work contract may lay down several places or a rule that the employee can determine the place of work.

However, the amendment introduces several other pieces of information, which need to be included in a work contract, and if this is not the case, the employer is obliged to inform the employee on such aspects of work or employment terms and conditions and needs to do so in writing within the deadlines provided in the Labour Code, at least in the following scope:

a) Manner in which the place of work or the main place of work is determined if the work contract lays down several places of work,

b) Determination of the weekly working hours, information about the manner and principles of working hours distribution, including the expected work days and the duration of a "compensatory period" as per Sections 86, 87, and 87a of the Labour Code, the scope and the time when work breaks are provided, uninterrupted daily rest and uninterrupted weekly rest, rules of overtime work including additional pay for overtime work,

c) The amount of vacation days or the method of determining it,

d) Salary due date and salary payment, including paydays,

e) Rules of employment termination, notice period length or manner of calculation, if at the time of notice, it is not known, the statutory period for filing an action for annulment of employment termination,

f) Entitlement to professional training by the employer, where such training is offered, and the extent of the training.

We recommend that employers check the standard employment contracts they use and identify which of the above information is potentially missing from the contracts, and then decide whether, for new hires who joined the company after 01.11.2022, the information will be included in the employment contracts, i.e. the information will be added directly to the contracts, or the employees will be provided a written letter within the statutory period (depending on the type of the information provided, this may be 7 or 4 weeks of employment start).

The employer owes this obligation primarily to new employees whose employment started after 01.11.2022.

As to current employees, i.e. employees who were hired before 1 November 2022, the employer is obliged to inform them if an employee requests such information. The employer is then obliged to provide the information in writing also to the current employee and that within one month of the date of request.

The employer may provide the information also in the form of a link to the relevant provision of the Labour Code or a special regulation or to the relevant provision of the collective agreement. Where work and employment conditions are governed by a collective agreement, the written information needs to contain the name of the relevant collective agreement and its parties.

2. Information duties of employers

Following the latest amendment, employers may perform this newly introduced information to **provide written information** or other information that needs to be provided in writing pursuant to the Labour Code or other labour regulations if they provide the information in **written** or **electronic form**.

Information may be provided in electronic form only where the employee has access to the electronic form of the information, can store and print it, and the employer needs to keep proof that the information was sent or received unless otherwise provided by the legislation. The same applies to written responses of the employer, where the employer is obliged to respond to an employee request in writing. It means that if it is disputed whether the employer has performed this obligation, the employer needs to present proof at all times that the requirements for providing the information electronically have been met and the employer has proof that the information was sent or received.

3. Changes to notified work and employment conditions

When the work conditions or employment conditions listed in the Labour Code change, employers are obliged to inform their employees in writing of the change in work and employment conditions without undue delay, but no later than on the date when the change comes into effect; this does not apply if the change concerns the legal regulation or collective agreement to which the written information refers.

The agreed wording of a work contract may be changed only if the employer and the employee have mutually agreed to change it. The employer is obliged to execute the change to the work contract in writing and deliver one counterpart of the changed work contract to the employee.

4. Prohibition to engage in other gainful activities

Employers may not prohibit employees from engaging in any other gainful activities outside the working hours determined by the employer; this is without prejudice to the restrictions applying to other gainful activities under Section 83 of the Labour Code or special legal regulations. It means that employees may engage in other gainful activities outside their specified working hours, but the activities must not be competitive to the business objects of the employer. Engaging in any competitive gainful activity still requires prior written consent of the employer.

For instance, where an employee working as an auto mechanic wishes to repair/service cars on their own outside the working hours specified by the employer, i.e. in his spare time, the employee first needs to obtain prior written consent from the employer. However, if the employee wishes to engage in a gainful activity as a barman or cook, the employer cannot prohibit the employee from doing so.

5. Statutory period for serving documents

If any written documents of the employer concerning the effective date, change, or termination of employment or the effective date, change, or extinction of the obligations of employees following from their employment contracts are served by way of a postal undertaking, **the employer may not set a collection period shorter than 10 days for collection of the documents.**

6. Reasonable trial period

For employees with fixed-term employment, **the employer may not require a trial period longer than half of the agreed employment term**. At the same time, it still holds that the trial period may not be agreed for more than 3 months or 6 months for senior employees, respectively, and that the trial period cannot be extended.

In practice, this means that if, for instance, the employer and the employee agree on employment for a fixed term of 4 months, the trial period may not be longer than 2 months. If the parties agree to continue the employment past the agreed fixed term, the trial period may not be extended or renewed.

7. Switching to a different employment form

Employees have the right to ask their employers to switch to a different form of employment that involves more predictable and safer working terms and conditions (such as changing from fixed-term employment to an indefinite term or part-time to full-time employment, etc.).

If an employee with a fixed-term contract or a part-time contract, whose employment has been longer than six months and whose trial period, if any, has ended, has applied with the employer for an indefinite-term contract or a full-time contract, **the employer is obliged to provide a written reasoned response within one month of the application**; this applies also to any further application the employee files no sooner than after 12 months of filing their previous application. Employers that are individuals and employers that employ less than 50 employees are obliged to respond to any application as per the previous sentence within 3 months of the application date, and in the event of a repeated application, the employer may respond orally, unless the reasoning for the response has changed.

Where a woman or a man permanently taking care of a child younger than eight years of age applies for home office or telework as per Section 52 (2) Labour Code in order to take care of the child, the employer is obliged to offer a written reasoned response to the request where the employer has denied their request within a

reasonable period. When considering the request, the employer needs to take into account the work tasks and the legitimate interests of the employee.

8. Paternity leave

The Labour Code amendment introduces the term "paternity leave". The new term replaces the previously used expression "parental leave" as per Section 166 (1) of the Labour Code.

New fathers are entitled to paternity leave of 28 weeks, while single fathers are provided a leave of 31 weeks, and where a father takes care of two or more newborns, his entitlement is 37 weeks. Fathers on paternity leave enjoy increased protection against being terminated in the cases specified in Section 64 of the Labour Code.

9. Deadline for filing action for annulment of employment termination

It is still true that employers, as well as employees, are entitled to file an action for annulment of employment termination **within two months of the date when the employment was supposed to be terminated.**

However, what is new is that if employment is extended as per Section 64 (2) of the Labour Code because the protection period under Section 64 (1) (a) of the Labour Code applies, the employee may sue for annulment of employment termination within two months of the last day of the protection period, **but no later than six months of the date when the employment was supposed to terminate, had the employee not been protected by the protection period.**

10. Changes to agreements to perform work outside working hours

According to the Labour Code amendment, where the average weekly working hours of a person working based on an agreement to perform work exceeds three hours in a period of four consecutive weeks, **it is required that the agreement also specifies the agreed place/s of work or includes the rule that the place of work will be determined by the employee**, in addition to all the information that the Labour Code requires for agreements to perform work outside working hours.

Also, the amendment provides that when entering into an **agreement to perform work, an agreement on temporary work of students, or an agreement on work activity, the employer is obliged to provide the following information to the employee**:

a) The dates and times when the employee may be required to perform work,

b) The time period when the employee needs to be informed of the work performance prior to starting the work; the period cannot be shorter than 24 hours.

In case the data above change, the employer is obliged to inform the employee in writing of the changes no later than on the date when the change comes into effect.

The employee is not obliged to perform work where the employer demands that the work be carried out at variance with the written information. Where the employer cancels work performance within a period that is shorter than the notified period, the employee is entitled to compensation of the pay the employee would be entitled to for the work, at least in the amount of 30% of the pay.

This information duty does not apply if

a) The employer applies Section 90 (4) and (9) of the Labour Code (distribution of working hours is determined by the employer following an agreement with an employee representative, and the employer needs to issue the information in writing no later than one week in advance and the information is valid for no less than a week),

b) The employer has agreed with the employee that the employee is in charge of working hours distribution, or

c) The average weekly working hours will not exceed three hours in a period of four consecutive weeks.

We recommend that employers check their standard agreements and identify which of the above information is missing from the agreements, and decide whether the information will be included in the agreements, i.e. any missing data will be added directly to the agreement or whether a written letter will be sent to the persons working based on agreements to perform work within the statutory period (upon agreement execution or within 7 days of the date when the average weekly limit of 3 hours was exceeded in a period of 4 consecutive weeks).

11. Salary deductions for meal allowance

The Labour Code specifies what deductions may be made from salaries without prior consent or special written agreement with employees.

According to the amendment, employers may deduct amounts from salaries to cover advance payments on the employer's contribution to meals or a special-purpose financial contribution to meals.

Starting on 01.11.2022, a special written agreement between the employer and the employee is no longer required for such type of salary decoctions.

12. Solidifying the rights of trade unions

Employees will newly have more rights to access information about trade unions membership. According to the Labour Code amendment, a trade union organisation active with an employer has the right to adequately approach employees for the purpose of offering membership with the organisation. The manner of approaching employees will be agreed upon between the trade union organisation and the employer. Failing to achieve an agreement, the employer is obliged to provide a written letter to the employee on the trade union organisation active with the employer, specifically, the basic data offered by the trade union organisation to the employer, including in particular the name, seat, website, e-mail address, social media profile name, phone number and address of the space dedicated within the electronic information system of the employer, within the deadlines provided by the Labour Code.

The trade union organisation active with the employer has the right to adequately inform employees of its activities. The manner of informing employees needs to be agreed upon between the organisation and the employer. If there is no such agreement, the employer is obliged to provide an opportunity to the trade union organisation to publish notices about its activities in a place accessible to employees. Where employees can access the electronic information system of the employer, the obligation under the previous sentence is met if the employer provides dedicated space in the system to the trade union organisation.

The legal team at RUŽIČKA AND PARTNERS is here to help you.
Do not hesitate to contact us!

RUŽIČKA AND PARTNERS s. r. o.

Information pursuant to Act no. 136/2010 Coll.
Limited Liability Company founded in line with Slovak law.

Seat:

Vysoká 2/B, 811 06 Bratislava, Slovak Republic
Tel: +421 (0)2/32 33 34 44
Fax: +421 (0)2/32 33 34 43
Email: office-ba@r-p.sk
IČ DPH: SK2022827620

Entered in the Commercial Register of District Court Bratislava I, Section Sro, Entry no. 58431/B, Id. no. (IČO): 36 863 360.

Entered in Slovak Bar Association (hereinafter as "SAK") on 04 June 2009.

Authorization to provide legal services and legal consulting (attorney services) in line with Act no. 586/2003 Coll. on Advocacy as amended, established based on registration of the company in the register kept by SAK having its seat at Kolárska 4, 813 42 Bratislava, Slovak Republic.

The company provides attorney services in compliance with the provisions of Act no. 586/2003 Coll. as amended and in line with relevant SAK regulations based on client agreements governed by Slovak law. In case of service provision to foreign entities, the Slovak court competent based on the seat of the company pursuant to Slovak legal regulations has jurisdiction.

Liability for damage caused by the company in provision of legal services is regulated by Act no. 586/2003 Coll.

The company has taken out liability insurance with Starr Europe Insurance Limited, registered office of insurer: Dragonara Business Centre, 5th Floor, Dragonara Road, St. Julians STJ 3141, Republic of Malta, registration No.: C 85380, operating in the Slovak Republic through its branch STARR EUROPE INSURANCE LIMITED, pobočka poisťovne z iného členského štátu. The branch is registered in the Commercial Register of Bratislava I District Court, Section Po, File No. 6332/B, with registered office at Panenská 5, 811 03 Bratislava, Slovak Republic. Insured activities: provision of legal and professional services, contract No..: 7707024612. Limit of indemnity: 15 000 000 EUR for any one occurrence and in the aggregate during the insurance term.

The company provides services for a fee, the amount and form of which are to be agreed contractually before commencing the provision of services in line with the Decree of Ministry of Justice SR no. 655/2004 Coll. as amended.

Grievances or complaints regarding the services provided by the company may be submitted at company premises.

Other information about the company may be obtained at the company offices.