Rödl & Partner

# NEWSFLASH SLOVAKIA

# SETTING FOUNDATIONS

Issue:
16 March
2021

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# → Amendment of the Labour Code

The Parliament of the Slovak Republic has approved an amendment of the Labour Code that introduces some specifications with respect to leave, definition of an employee taking permanent care for a child and also introduces a new regulation in the area of catering of employees and homeworking or teleworking. The amendment is relatively extensive and has affected also agreements on performance of work outside of employment, collective labour relations and has introduced a new reason for termination of employment.

The changes will take effect in three stages. As from 1 March 2021, the majority of the affected provisions of the Labour Code has been amended / changed.

## Young workers

The work possibilities for persons older than 15 years until the completion of the compulsory school attendance have been extended. In principle, such persons are prohibited to work; pursuant to the amendment of the Labour Code they will be allowed to carry out also other than easy work allowed until now, that does not pose a threat to their health, safety, school attendance or their healthy development.

## Employee taking permanent care for a child

The Labour Code lacked the definition of an employee taking permanent care for a child, although this term has been used in the Act. It has been amended as follows: Such employee means an employee, who personally takes care for her/his own minor child including joint physical custody of both parents and an employee who personally takes care for a minor child that was entrusted to her/his care replacing parental care under a court resolution. The employer has to be notified of this situation, starting from this day the employee is entitled to assert rights related to this position.

With effect as from 1 January 2022 also the definition of leave entitlement of an employee taking permanent care for a child is being specified. The new provision shall specify the calculation of the leave entitlement if the employee starts or stops to take care for a child in the course of the year. In such a case the employee is entitled to leave on pro-rata basis.

## Probationary period

The amendment further specifies the extension of probationary period. If the employee fails to work the whole working shift due to obstacles to work on part of the employee, the probationary period shall be extended by one calendar day.

## Probationary period

Very interesting is also the amendment regarding the temporary assignment of employees / lease of employees between the controlling and controlled entity. Adoption of this change shall ensure a more flexible assignment of employees between companies in a group. It applies in general that assignment is possible only through a temporary employment agency or through an employer if operational reasons are given. At the same time it is only possible after 3 months after the commencement of employment. The amendment introduces a possibility of temporary assignment of employees (leasing) between the controlling and controlled company also if there are no objective operational reasons on part of the employer and also before the lapse of three months after commencement of employment. A prerequisite is that the temporary assignment must be free of charge. A reimbursement of costs spent on the employee is possible.

## Flexible working time

The adopted changes affect also the flexible working time. The amendment introduces exceptions, during which the introduced flexible working time shall not apply, as e.g. business trips

or other cases, if agreed between the employer and the employees' representatives e.g. training.

## Agreements on work carried out outside of employment

The scope of provisions applicable to Agreements on work carried out outside of employment has been extended. In addition to the already valid provisions such Agreements will be subject to provisions on work suitable for young workers, overtime work, night work, stand-by duty for young workers and prohibition of work for young workers. The duty to conclude a written agreement on performance of work on the day before work commencement at the latest has been deleted. A new provision introduces the prerequisite that a person interested in an agreement on students' work has the status of a secondary school student or status of a student of the 1st level of university education until the 31 October of the year, in which she/he has completed the secondary school or the respective level of university education. This regulation has practical reasons, as until now, such persons might have not been held for students, although they continued their university studies after secondary school or after completion of the first level of university education.

## Home working or teleworking

The Labour Code has been amended also with respect to home working or teleworking. The original wording of Sec. 52 has been replaced and the amendment introduces a new definition of home working or teleworking and their conditions.

Home working or teleworking means that the work usually performed in the workplace is transferred outside of this workplace and is carried out outside of this workplace regularly. This may be the in the extent of the whole stipulated weekly working time or a part thereof, e.g. 3 days a week. In addition, teleworking means if the work is carried out through information technologies and electronic data transmission takes place.

The amendment differentiates work in the household of an employee, if carried out in the household only occasionally or under extraordinary circumstances upon agreement with the employer. In this case the context of the performance of such work is partially different.

In both cases household means any other place outside the workplace of the employer, it does not have to be necessarily the home of the employee.

In order to carry out home working or teleworking an arrangement in the employment agreement between the employer and the employee is required. In the employment agreement it is possible to agree that the employee will determine a place, from where he/she will carry out the work and also that part of the work shall be carried out in the workplace of the employer.

Another prerequisite may be the flexible working time of the employee or such working time, that will be distributed by the employee alone. Otherwise it shall apply that the distribution of working time is subject to provisions of the Labour Code on even or uneven distribution of working time.

If the employee will distribute the working time by him/herself, he/she will not be subject to the Labour Code to the full extent. The provisions on distribution of working time, obligatory continuous daily rest and continuous weekly rest, provisions on stoppages (except for those caused by the employer e.g. failure to submit documents) will not be applicable. Furthermore, the employee shall be entitled neither to wage compensation (except for the case – death of a family member) nor wage for overtime, wage surcharge for work on national holiday, wage surcharge for work on Saturday, wage surcharge for work on Sunday, wage surcharge for night work nor wage compensation for work in difficult conditions, unless the employee and the employer agree otherwise.

The amendment imposes on the employer duties related to the performance of work, which will be carried out outside of the workplace. Among such duties is the duty to provide reimbursement for the use of own devices, tools or items necessary to carry out work, if such use has been agreed. Such duties do not apply to work, which is carried out in the household only occasionally, except for the duty to provide for the protection of data processed during teleworking in particular with respect to program equipment.

At the same time the right of the employee to disconnect has been introduced, i.e.

the possibility not to carry out work outside of the working time (e.g. during the continuous daily rest and continuous weekly rest, during the leave etc.), such failure to carry out work is not being considered as breach of discipline at work.

## Meal allowance

The amendment of the Labour Code has introduced a new meal allowance on part of the employer. Starting from 1 March 2021, employers who do not provide to employees meal in their own catering facilities or catering facilities of another employer shall provide to employees a meal allowance in form of lunch vouchers or a financial allowance, at the employee's option.

Starting from 1 March 2021 employees of employers, who do not provide meal to the employees in a catering facility, may choose between meal vouchers or a financial allowance for meals. The employee is bound by his/her choice for a period of twelve months.

The financial allowance has to be in the same amount as the meal allowance provided by the employer to other employees. If the employer does not provide meal allowance to other employees, the financial allowance shall amount between 55 percent of meal vouchers and 55 percent of the meal allowance provided for business trips lasting 5 to 12 hours in accordance with other regulations.

If an employer has concluded an agreement with a provider/eminent of lunch vouchers, transitional provisions of the amendment shall apply. Such employer is not obliged to let the employees chose between meal vouchers and a financial allowance. Such transitional period applies until 31 December 2021.

Meal vouchers in electronic form have been introduced with effect as from 1 January 2023.

For more information please see our Mandate letter dated 25 February 2021.

## Disputes regarding trade union operation

The amendment affected also collective relations under the labour law. The employer is obliged to enable the operation of a trade union in the workplace, however, pursuant to the amendment of the Labour Code only if members of such trade union are among the employees with an employment contract.

In case of doubt, whether employer's employees include members of a trade union, which informed the employer in writing about the commencement of its operation at the employer´ s organisation, it is considered to be a dispute over the operation of trade union with the employer.

The dispute shall be resolved by an arbitrator determined by both parties from the list of arbitrators. Thereafter they shall submit to him/her the lists of employees. If the parties are not able to agree on the person of the arbitrator, upon the request of either party, the arbitrator shall be appointed from the list of arbitrators by the Ministry of Labour, Social Affairs and Family of the Slovak Republic.

## Age and termination of employment

With effect as from 1 January 2022 a new reason for termination of employment has been introduced in the Labour Code. After reaching the age of 65 and the simultaneous accrual of the entitlement to old age pension, such employee may be given notice of termination unilaterally or after mutual agreement. In both cases such employee will be entitled to a severance payment, as in case of termination of employment due to organisational reasons..

## Illegal employment and prohibition to accept service

The amendment of the Labour Code has affected also other legal regulations. An interesting example is Act No. 82/2005 Coll. on Illegal Work and Illegal Employment. In accordance with the said act the entrepreneur is prohibited to accept a service provided through an illegally employed person. Such prohibition applies among others to the cross-border provision of services exceeding 5 days during 12 month. Starting from 1 March 2021 this duration has been extended to 30 days during 12 months from the first provision of the service.

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