

Temporary Posting of Workers: a Hit in Recent Years in Slovakia



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The temporary posting, personal leasing or hiring-out of workers, a legal institute well-known and frequently used in the “old” EU countries, is becoming more frequently used in Slovakia. In this article, the main characteristics of this institute will be highlighted.

One legal ground for temporary posting is Article 58 of the Slovak Labor Code (Act No. 311/2001 Coll. as amended) and Act No. 5/2004 Coll. on Employment Services.

Contract agenda of temporary posting

Entities authorized to temporarily post workers to another legal or natural person (“user employer”) under Slovak law are the current employer of the worker (“lending employer”) or a temporary employment agency (“agency”).

Temporary posting presumes the existence of the following agreements or contracts:

- (i) An employment contract must be concluded between the worker and the lending employer and/or the agency.

An employment contract must not be substituted by an agreement on work performed outside the scope of an employment relationship.

- (ii) Moreover, a written temporary assignment agreement must be concluded between the lending employer and/or the agency and the worker.

A temporary assignment agreement must include certain elements as specified in the Slovak Labor Code. The same prerequisites must be included in the employment contract (if concluded for a definite period of time) concluded between the agency and the worker.

- (iii) In practice, a temporary assignment agreement must be preceded by a business agreement concluded between the lending employer and/or the agency and the user employer.

This agreement has the nature of a so-called anonymous agreement, i.e., Slovak legislation does not stipulate any prerequisites which the agreement must contain; therefore, the parties are free to adjust their commercial relations. Besides the business issues, it is advisable to focus in the agreement on certain specific legal questions (e.g., liability for damage caused by the worker to the user employer, as the liability of workers is generally limited to three times their average monthly earnings).

Division of roles and competences

The user employer may assign tasks to the posted worker to organize, manage and control his or her work. Executive employees of the user employer are precluded from taking any legal actions concerning the posted worker, e.g., modification or termination of his or her employment contract, on behalf of the lending employer and/or the agency.

As a proven and effective tool for covering a temporarily higher need for labor, particularly regarding seasonal work or time limited contracts, it is broadly used by key market players such as car producers, retail chains, etc.

On the other hand, it is still the lending employer and/or the agency that pays the wages

and traveling expenses and contributions to health insurance and social security, etc., to the posted worker.

Further obligations

The main obligation of the lending employer and the agency during the temporary posting is to ensure that the posted worker has the same employment conditions as a “comparable employee”, i.e., a regular worker of the user employer who performs the same work, taking into account the qualification and duration of professional experience.

The employment conditions include working hours, wage conditions, health, safety and hygiene at work, compensation for damage in the event of an occupational accident or occupational disease, compensation in the event of insolvency, maternity protection, rights to collective bargaining, etc.

In this context, it has to be noted that the wage conditions need not be equally favorable for a worker posted by the agency if the length of the posting is less than six months and/or between two assignments, or if adequate protection for the posted worker is secured in a collective agreement.

Conclusion

Temporary posting, despite the specific obligations and conditions laid down in national and European legislation, plus the agency’s commission, which increases costs, is becoming more popular in Slovakia. As a proven and effective tool for covering a temporarily higher need for labor, particularly regarding seasonal work or time limited contracts, it is broadly used by key market players such as car producers, retail chains, etc.

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