

# Agency Employment in the Czech Republic: an easy way to acquire employees



*Illustrative photo*

Agency employment, i.e. temporary assignment of an employment agency's employee to perform work for a separate employer (user) is a very common way of acquiring workers in the Czech Republic. This form of employment is a very effective, easy and available means by which an investor can acquire new employees, particularly in cases of one-off or time-limited orders, seasonal work, insufficient workforce on the local labour market and in many other cases.

Thus, it is very advantageous especially for incoming foreign investors, as from the user's perspective it is an **administratively undemanding means of gaining employees** without complicated legal acts related to the establishment and termination of employment relationships. It also results in lower costs in the area of human-resources management and the investor is not burdened with contributions

to the health insurance and social-security schemes or to the state employment policy. Furthermore, it enables simplified human resources planning. It is also advantageous for employees, as it helps to reduce unemployment, makes it possible to choose short-term employment and to bridge the period in which it is possible to find longer-term employment, and helps graduates in their job searches.

## Characteristics of agency employment

**Agency employment** is a specific form of employment in which the de iure employer and the de facto employer are not the same entity. This concerns the mediation of employment in the form of temporary assignment of an employee to perform work for a separate legal entity or natural person. The employment agency (hereinafter referred to as the "agency"), which takes on the role of the de iure employer with all responsibilities, related thereto, acts as a mediating administrative body in the actual employment relationship between the "user" employer and the employee.

**The de iure employer**, i.e. the agency, is understood to be the employer with which the employee signed an employment contract or agreement on work activity. Act No. 262/2006 Coll., the Labour Code, as amended, fully applies to the legal relationship between this entity and the employee. However, the employee does not perform the relevant work for this employer.

The agency's activity in the area of agency employment has the character of a **commercial undertaking**. The agency, a licensed commercial entity, provides its employees to users, whereas such provision is based upon consideration and comprises the foundation of the agency's business activities. Such consideration is thus a basic characteristic of the legal relationship between the agency and user. Agencies have the right to demand payment for their services only in relation to their business partners, i.e. the users. An agency may not demand such payment from natural persons whom it employs or intends to employ in future.

**The de facto employer (user)** is understood to be an entity that assigns work to the employee and provides instructions for the performance of such work. The user, without involving itself in personnel issues related to its business at the internal level, thus receives the opportunity to entrust part of its human-resources administration to an external entity, which allows it to better concentrate on its core business activities. The relationship between the agency, temporarily assigned employee and the user forms a triangle of legal relationships, which is the subject of this article.

**Agency employment** requires “comparable conditions”, which can be defined as working and wage conditions comparable to those enjoyed by the user’s own employees. The agency and user are obliged to ensure that such conditions are as good as the existing or probable conditions applied to comparable employees (taking into account qualifications and length of professional experience).

Where the **duration of the temporary assignment** is concerned, it essentially applies that the agency may not assign an employee to perform work for a user for a period exceeding 12 consecutive calendar months. Nevertheless, the Labour Code sets forth certain exceptions.

### The agency-employee relationship

The first step on the path to establishing the notional triangle of legal relationships between the agency, its employee and the user is the **establishment of an employment relationship between the employee and the agency based on an employment contract** or a legal relationship based on an **agreement on work activity**, which is concluded for the purpose of performing work for the user. An agreement on performance of work thus is not applicable within the context of temporary assignment. However, its inclusion is currently being discussed intensively at the expert level.

In order for the agency’s employee to be assigned temporarily at a later day, the employment contract or agreement on work activity must contain the **employee’s consent to possible assignment** to perform work for an entity other than his/her employer. Such consent must therefore have the form of a written agreement within the employment contract or agreement on work activity by which the agency undertakes to ensure its employee’s temporary work for the user and by which the employee undertakes to perform such work according to the user’s instructions. This means that, in addition to other basic requisites pursuant to the Labour Code, the employment contract must contain a further basic agreement pertaining to the above-mentioned obligations of the agency and its employee.

The agency assigns the employee to work temporarily for the user according to **written instructions**. This concerns a unilateral legal act whose required content is stipulated by the Labour Code. This act contains, for example, the period of duration of the temporary assignment, information on “comparable conditions” and, optionally, conditions of a unilateral declaration on termination of work performance prior to expiration of the temporary assignment period if an agree-

ment on temporary assignment has been concluded. Such instructions cannot change the type of work that was agreed in the employment contract or agreement on work activity concluded between the agency and the employee. It generally applies that even though written instructions are not part of the employment contract or agreement on work activity, such instruction cannot be in contravention of the legal framework laid out by such contract or agreement.

### The agency-user relationship

A written **agreement on temporary assignment** of the employee concluded between the agency and the user is of fundamental importance. Such an agreement’s required content is determined by the Labour Code as follows: identification of the temporarily assigned employee; the type, duration and place of work performance; date of entry into work performance; information on “comparable conditions”; conditions under which the temporary assignment may be terminated by the employee or the user prior to expiration of the agreed period; and information on the agency’s license to conduct the relevant activity.

### The user-employee relationship

The relationship between the user and the assigned agency employee is a de facto relationship that arises through the transfer of the dispositional competence of the employer (the agency) to another entity (the user). Therefore, the user manages and supervises the employee’s work during the period of temporary assignment. This dispositional competence is connected with the obligation to create favourable working conditions and to ensure safety and protection of health during the course of work. The veracity of this relationship is thus underpinned by the fact that the user expressly undertakes not to perform legal acts with respect to the employee on the agency’s behalf.

### The future of agency employment in the Czech Republic

In the near future legal regulations governing agency employment will probably be subject to certain changes in connection with endeavours on the part of the Ministry of Labour and Social Affairs to generally revise the Labour Code. The ministry has proposed, for example, allowing temporary assignment on the basis of an agreement on work performance and stipulation of its mandatory written form, allowing temporary assignment of employees to a separate legal entity or natural person by other employers that are not agencies under the condition that the purpose of such assignment shall not entail the lending of

workers and that the wage and other working conditions of temporary employees will be at least the same as the working conditions of comparable employees of the legal entity or natural person to which they are assigned, and separation of the conditions under which a temporary assignment can be prematurely terminated by the employee or user from fundamental requisites of the agreement on temporary assignment and formulation of an agreement on such conditions as a possibility.

Also under discussion is whether and how to define “comparable conditions”, how to deal with the effectuality of collective agreements concluded by users for agency employees, and the issue of liability relationships, particularly direct general liability for damage, between the agency employee and the user pursuant to Section 250 of the Labour Code.

An amendment to the Employment Act is also being prepared, which should tighten conditions relating to agency employment. As compared to current regulations, the draft amendment assumes the participation of the Interior Ministry in the process of awarding permits for employment mediation. Pursuant to the draft amendment, the Ministry of Labour and Social Affairs should be obliged to obtain the agreement of the Interior Ministry; without such agreement, it will not be possible to issue permits. Pursuant to the draft amendment of the Employment Act, the Interior Ministry could revoke an agency’s licence in the event that the agency does not fulfil its obligation to statistically document the number of employed persons. The amendment would also increase penalties imposed on agencies.

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