

More rainy days under the new collective umbrella?

If you think your company is too small to be exposed to trade union issues or your company's internal rules are not influenced by collective agreements, you may need to think again.

The recent key changes to the Slovak Collective Bargaining Act may significantly extend the application of collective bargaining agreements to more businesses.

What is a collective agreement?

Collective agreements are binding arrangements which arise through collective bargaining between employers and employees. They generally provide employment terms more favorable for the employees than those naturally provided under applicable law. To illustrate a few common possible examples, collective agreements often provide for higher employee remuneration, additional holiday allotment, or more overtime work compensation.

There are essentially two types of collective agreements. The first, the "basic" collective agreement, is an agreement concerning general employment terms concluded between a single business and a trade union organization active within such business. The second type, the "higher-level collective agreement," is an agreement on general employment terms concluded between at least one association of multiple employers in a particular industry and at least one higher-level trade union in such industry. Application of the higher-level collective agreements may be confined regionally.

What are the obligations?

Currently, companies have no automatic duty to enter into any collective agreement. They are, however, obliged to allow for the formation of employees'

representative bodies, if requested, and recognize the organization of their employees within trade union organizations or higher-level trade unions that may eventually lead to the conclusion of collective agreements.

What's new?

The Slovak National Council approved a new set of changes to the Collective Bargaining Act prepared by the Ministry of Labor, Social Affairs and Family ("Ministry"), which will hardly cheer up any Slovak employer. Even if your business does not currently have any collective agreement in place and is not party to any association of employers which has concluded a higher-level collective agreement, your business may nevertheless become restrained by the provisions of a higher-level collective agreement if it is active in an industry in which there is such a higher-level collective agreement in place.

As from January 1, 2014, it is possible that a higher-level collective agreement will become binding on businesses that are not its original participants. Application of the collective agreement may be extended provided that (i) the relevant higher-level collective agreement concerns a prevailing number of employees in the given industry (applicable in cases where there are multiple higher-level collective agreements covering such industry), (ii) a relevant trade union or employer already subject to the agreement submits a request to the Ministry for such extension, (iii) the business (or businesses) to which such

extension should apply according to the request fail(s) to provide successful objections and (iv) no exemptions apply.

Applicable exceptions provide that a higher-level collective agreement cannot be extended to businesses bound by another higher-level collective agreement, businesses which employ less than 20 employees, businesses in which more than 10% of their workforce consists of physically handicapped employees, businesses active for less than 24 months, and businesses which are insolvent or in the process of their winding-up or administration. It remains unclear, however, what grounds for successful objections to the extension of a higher-level collective agreement will be identified and recognized by the Ministry in the future application of this procedure.

Upon receiving a valid request to extend the application of an existing higher-level collective agreement, the Ministry should publish the proposal for extension of the agreement in the Commercial Journal (*Obchodný vestník*). Any businesses affected by such proposed extension will have 30 days to file and substantiate their objections. The Ministry, by way of consultation with a specifically designated advisory committee, will then ultimately decide whether the higher-level collective agreement will be binding on other businesses in the proposed industry (or its part), to be effective as of the publication of its relevant decision in the Slovak Collection of Acts (*Zbierka zákonov*).

Except for publication in the Commercial Journal, any business to which such proposed extension could apply will not be given direct notice of such proposal and may lose the opportunity to successfully challenge the extension if it fails to submit its objections within 30 days following the publication.

Conclusion

Businesses which are active in industries such as engineering, transport, energy, retail, or tourism – to name few of the roughly fifteen currently applicable fields – and which are not yet bound by the effects of any higher-level collective agreement will need to regularly monitor the Commercial Journal in order to timely identify potential requests for extension of higher-level collective agreements concerning their operations, analyze whether they fall within the category of the relevant industry, and consider implications of such extension and available objections to protect their interests as collective agreement-free employers.

In practice, it will be intriguing to observe the way in which the Ministry will develop its view on the potential objections raised by businesses. Similarly, practical uncertainties will need to be addressed, for example, in scenarios where businesses move between different industries or if their respective industry's official classification changes in due course.



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