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New limits for flexibility of employment

The draft amendment to the Labor Code is currently being discussed by the Slovak parliament and should go into effect on January 1, 2013. The draft law will limit contractual autonomy of employers and employees with respect to some terms of employment contracts and scheduling of working hours.

According to the governmental proposal, the amendment tightens the regulation in several areas of flexibility of employment conditions, including:

- conclusion of the employment contract for a fixed term,
- flexible working hours (pružný pracovný čas),
- irregular scheduling of working time (nerovnomerné rozvrhovanie pracovného času),
- working time account – i.e. flexi account (flexikonto).

In some of these areas, the limitation is absolute - the amended Labor Code sets new unsurpassable limits, in particular on employment contracts for a fixed term. In other areas the limitation occurrs by necessary involvement of a third party - the employees' representatives.

Employment contract for a fixed term

The previous regulation allowed the employer and the employee to agree on an employment contract for a fixed term up to three years. During this period the fixed term could be extended or renegotiated three times. From January 1, 2013, the maximum limit should be two years, and during that period the term may be extended or renegotiated twice. Luckily, thanks in part to AmCham's comments to the draft law, an exception from this rule should be in place for employment agencies, despite the original intention to cancel this exception.

It is unclear whether such a restriction will lead to more indefinite period contracts or will instead cause more replacements with new employees with whom new fixed terms may be agreed.

If the law requires approval of employees' representatives or agreement with them, the employer may act alone if there are no employees' representatives in its organization.

Irregular worktime schedule, flexible working hours and flexi account

The amendment will add the missing interpretative rule. According to such a rule, if the law requires approval of employees' representatives or agreement with them, the employer may act alone (autonomously) if there are no employees' representatives in its organization. However, it does not apply in cases where the Labor Code expressly stipulates that the agreement with employees' representatives cannot be replaced by the employer's decision.

Such a situation occurs, for example, with respect to "flexiaccounts". A flexi account is the arrangement enabling flexibility of working hours. To simplify – if there is not enough work for an employee, the employee gets paid time off which is recorded in his "account" of time-off hours. If there is need later for work beyond regular working hours, such work would not be considered paid overtime until the "account" has been emptied. Currently the flexiaccount exists in two forms, as a permanent arrangement under Section 87a (the so-called "big flexi-account"), and as "ad hoc" solution addressing the situation that would have otherwise constituted obstacles to work (the "small flexi-account")regulated by Section 142a of the current Labor Code. The draft amendment to the Labor Code would cancel "small flexi account". Introduction of a "big flexi account" will be subject to an agreement with employees´ representatives which will not be possible to replace with a decision of the employer or agreement with the employees themselves. After the amendment, the employer will not be able to apply any flexi-account if there are no employees' representatives in its organization. The government admits that this rule is intended to put pressure on employers to welcome establishment of the employee representation units, such as employees' fiduciaries, employees' councils, or trade union units.

A similar situation governs irregular scheduling of working time for a reference period of 12 months. According to Section 87(2) of the Labor Code, the so-called "reference period", which is otherwise up to four months, can be extended to 12 months only by agreement with employees' representatives that cannot be replaced by a decision of the employer. That further limits the possibility of the employer without employees' representatives to adapt for the case of loss or restriction of customer orders or other situations causing irregularities in need of work. Such an employer may not even agree that its employees will only receive 60 % of wages if there is not sufficient work and they stay at home due to obstacles of work. Such limitations of payments would also require agreement with employees' representatives.

If the draft is approved, employers who want to introduce flexible working hours will also be subject to an agreement with employees' representatives. Currently only a discussion with them is required. In this case, at least, if there are no employees' representatives, an employer may introduce the flexible hours autonomously.

Impact of the amendment

Overall, the proposed amendment of the Labor Code would introduce new limitations to the contractual freedom of employment relationships. According to the declaration of the governmental officers, the aim of the new law is to protect employees and strengthen the role of employees' representatives. However, it should also be considered whether new limitations of flexibility will correspond to another aim of the government - to support and enforce the qualified workforce and support high-value industries.

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