

Making the labor code work

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Satisfied employees are a prerequisite for a successful business. This is why every employer should ensure compliance with the labor law. This may prove to be a demanding task as labor law provisions have failed to keep pace with the Fourth Industrial Revolution and do not reflect the current needs of the employers.

New Age: Labor Law vs. Digitalization

Industry 4.0 has brought countless new challenges to the labor law. Increased flexibility of employment, sharing (collaborative) economy and crowd working have challenged the traditional understanding of terms like 'employee' and 'sole trader'. Differences between them are fading.

Teleworking and home office have widely increased, so many employees do not have to commute daily to their offices to perform their jobs. Some can work even from abroad for a longer term with the full agreement of the employer. In addition, the digital era contributes to a new wave of Taylorism. Work tasks are no longer broken down into part-time or project-based shifts only. They are divided even further on a micro-level, which leads to micro-entrepreneurs, on-demand workers, gig-workers etc. This development raises a wide range of questions regarding current labor law regulations.

Current impact on business

Despite Industry 4.0, Slovak labor law still affects the day-to-day business of most entrepreneurs in a very traditional way. Its inflexibility is visible especially if a labor relationship is to be terminated upon the employer's decision.

Protection of employees

The Labor Code as the fundamental act governing employment relationships in Slovakia is intended to protect employees. As employers are considered to be the dominant contractual party, the Labor Code aims to compensate this

imbalance. For example, an employer may terminate an employment relationship only when a statutory reason for termination exists and further conditions, as stipulated by labor law, are met.

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Besides some widely known conditions for a valid dismissal of an employee such as the employer's obligation to offer another appropriate position to the employee, protection of certain employees from dismissal via termination notice, obligatory written form of the termination notice or its delivery to the concerned employee, the employer shall also consider:

Performance termination

A performance based termination requires:

- the employee is not able to perform his/her work satisfactorily,
- such insufficiencies have not been induced by the employer,
- the employee has been duly informed about the insufficiencies within the

last six months prior to the termination notice,

- the employee did not rectify the insufficiencies within a reasonable period of time, which shall be expressly stated in the calling to improve the work performance. The evaluation if the work tasks were performed properly depends on the employer. However, the employer's requirements shall be defined clearly and comply with all principles of Slovak labor law.

The above criteria seem adequate at first sight. However, in real life the employer may seek other solutions, which would – in compliance with Slovak labor law – also allow him to dismiss the employee.

Redundancy Termination

Similar issues may occur in case of redundancy termination. An employee may be terminated only if

- (i) there is a prior written resolution of the employer on the change of the employer's tasks, technical equipment or reduction of numbers of employees for the purposes of increasing efficiency, or on other organizational changes and
- (ii) the above changes directly cause the redundancy of such employee.

In other words, not all employer's resolutions regarding organizational changes might be used as legal basis for a redundancy termination. Moreover, if the employer gives notice to the employee due to his/her redundancy, the employer may

not re-create the wound-up position anew and/or employ other persons to such positions within two months after the employment ended.

Mass termination

The Labor Code imposes further duties on the employer, if the mass dismissal occurs (e.g. negotiations with employee representatives or even with the employees directly, notification of the intended mass dismissal to the Slovak labor authorities etc. are required). Due to the EU labor law, the entire process will be probably more complex if the employer is a part of a concern. This is based upon the fact that the obligation to inform the employees on the intended mass dismissal(s) arises after the holding company decides upon corresponding organizational changes with the effects for the entire group.

To sum it up

In practice, every employer is exposed to different risks connected with employment relationships. Some of them can be easily eliminated through precise regulation of the employer's and employee's rights and duties in employment agreements or internal guidelines. Other cases require deep knowledge of the latest development of labor law provisions and relevant jurisprudence. This is the only way to prevent the invalid termination of an employment relationship or fine(s) imposed by the Labor Inspection Office.

