


# New regulation of cross-border posting of workers

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**As of June 18, 2016, a new Act No. 351/2015 Coll., on cross-border cooperation in the posting of employees for the performance of work during the provision of services came into effect.**

This act implements certain provisions of Directive 2014/67/EU of the European Parliament and of the Council (15 May 2014), on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ("the IMI Regulation") and it introduces changes affecting employers that are posting employees within the EU. Among others, the act introduces the following important changes:

- Foreign employers who post their employees to Slovakia have to inform the Slovak National Labor Inspectorate of the posting and keep the documents on posted employees throughout the entire period of posting;
- Slovak employers must inform their employees about the working conditions in the country where they are posted;
- The recipients of the services must, before each delivery of work or a service, check whether the supplier does not violate the prohibition of illegal employment, otherwise the recipient is risking being imposed with a fine.

## **New obligations for the employers to be complied with during the posting**

New regulation introduces obligations for foreign employers which have to be complied with when posting of their employees as well as obligations of Slovak employers when posting their employees to other Member States. Employers based in a different Member State posting employees to Slovakia (i.e. the host employers) must meet the following obligations:

### *Prior to posting*

- notify the Slovak National Labor Inspectorate of specific data stipulated by the law;
- designate a contact person in Slovakia, authorized for the take-over of the documents and decisions.

### *During posting*

- maintain the documents regarding the posted employees;
- maintain and keep records of the working time of the posted employees.

### *Upon request of the Slovak National Labor Inspectorate*

- the Slovak National Labor Inspectorate may request the host employer, even after the completion of the posting, to present and deliver the relevant documents specified above, and if necessary, also their translations into Slovak.

If the employers based in Slovakia (i.e. the home employers) post their employees to another Member State, they have to provide information concerning the cross-border posting to the Slovak National Labor Inspectorate upon its request.

In order to enforce the above stated obligations, the respective local labor inspectorates may impose a fine up to 100,000 euros to both the host employers and home employers. The imposed penalties can also be enforced in another Member State, whereas new regulation specifies the cooperation of the Slovak National Labor Inspectorate with the respective authorities of the other Member States in this regard.

### **Amendments to the Labor Code**

Amendments to the Slovak Labor Code were also introduced and provided a new definition of posting. According to Sec. 5 par. 4 of the Labor Code, posting an employee to perform work during the provision of services shall mean the employee's cross-border

- posting under the authority and responsibility of the posting employer under a contract between the posting employer as the cross-border provider of the service and the recipient of the service,
- posting between a controlling person and a controlled person, or
- temporary secondment to a user employer.

Moreover, the condition that there is an employment relationship between the posting employer and the employee throughout the period of posting must be fulfilled in all of the above cases.

The Labor Code also introduces a joint liability of a contractor in Slovakia for non-payment of the salary to an employee by the host employer. If the host employer does not pay the employee's salary in full or part,

it must be paid by the Slovak contractor within 15 days since the delivery of the request of the host employer.

Furthermore, in the case of posting a home employee to another Member State, the home employer is obliged to inform the employee prior to the posting about the terms and conditions of the employee's employment, which shall be governed by the law of the state to which the employee is posted. Moreover, a written agreement on the posting must be concluded.

### **Amendments to act on illegal work and illegal employment**

According to the newly amended Act on Illegal Work and Illegal Employment (Act. No.82/2005 Coll.), the entrepreneur cannot accept the work or service provided through a natural person who is illegally employed by the provider of such work or service in the case of cross-border provision of services for a period exceeding five days during 12 months since the service was provided for the first time, or in the case of a national or cross-border supply of work.

In the case of a failure to comply with this restriction, a fine of up to 200,000 euros can be imposed, even in cases when the recipient of the works or services was unaware of this fact.

