

# News Flash

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**New obligations of employers in respect to cross-border posting of employees in Slovakia**

## Cross-border co-operation regarding posting of employees to perform work while providing services effective in Slovakia as of 18.6.2016

We would like to draw your attention to the Act No. 351/2015 Coll. on cross-border cooperation regarding posting of employees to perform work while providing services (hereinafter the “**Act on posting of employees**”), which is **effective as of 18 June 2016**, implements the EU Directive No. 96/71/ES into the Slovak law. This Act also amends other laws, such as the Labour Code, Act on illegal work and illegal employment and Labour inspection act. The Act on Posting of Employees brings **higher administrative burden for foreign employers who are posting employees** to perform work in the Slovak Republic. Starting from 18 June 2016 such employers will have obligation to cooperate with the National Labour Inspectorate (NLI) and notify the relevant authorities about the posting of employees to perform work, including provision of information on place and duration of posting, type of the provided services etc. **Slovak employers posting their employees abroad are obliged to inform their employees about the working conditions in the place of posting and conclude an agreement on posting.**

### Basic definitions

The new Act on posting of employees also amended the Labour Code. Amongst others, it lays down clear definitions of basic terms such as the posting employer and the posted employee.

In accordance with Section 5(4) of the Labour Code, **posting of an employee** to perform work with regards to provision of services is his/her cross-border:

- **posting under direction and within responsibility of a posting employer** based on an agreement between the posting employer, as a cross-border provider of service, and the beneficiary of such service, if there is labour relationship between the posting employer and the employee during the term of the posting,
- **posting between controlling entity and controlled entity or controlled entities**, if there is a labour relationship between the posting employer and the employee during the term of the posting, or
- **temporary assignment to user employer**, if there is a labour relationship between the posting employer and the employee during the term of the posting.

### New obligations of foreign employers

The foreign employer is obliged to notify the NLI about the posting of an employee, to provide necessary information and to maintain following information in the workplace:

- maintaining of an employment contract or other type of document confirming the labour-law relationship with the posted employee,
- keeping and maintaining of an evidence of the time worked of the posted employee,
- maintaining of documents on salary paid to the posted employee.

The foreign employer is also obliged to inform the NLI on the date of posting at the latest:

- company name and company seat,
- identification number (if assigned),
- expected number of the posted employees,
- identification data of posted employees,
- date of start and termination of the posting,
- workplace and specification of service provided by the posted employees,
- **designated liaison person for the delivery of documents and decisions who is present in Slovakia.**

Any information and all related documentation will be delivered to the foreign employer **via contact person**. Therefore, it is recommended to designate the contact person who is well oriented in the Slovak legislation and will be able to collect the possible delivery of mails, such as an HR representative, an advocate or an external consulting company.

The foreign as well as the domestic employer will be obliged to cooperate with the Labour Inspectorate. The foreign employer is obliged to deliver documents upon request of the Labour Inspectorate during and also after the term of posting. **The foreign employer is also obliged to provide translation of the documentation or its parts to Slovak language if necessary.**

Please note that the above-mentioned obligations **apply to all employee postings regardless of their duration. The Slovak law does not define the minimum period of posting.**

Please also note that similar rules will be introduced or have been introduced also in other EU member states, i.e. if you post employees abroad, we recommend you to verify the conditions and regulations of posting in the respective state to minimize the possible impacts and penalties.

Obligations of domestic employers towards Slovak institutions are less extensive compared to obligations of host employer. However, NLI/LI may also request the domestic employer to provide cooperation and all necessary information related to posting of employees.

**The home employer can post an employee to perform work to provide services from Slovakia to the territory of other EU member state only based on an agreement** which is in writing and includes following information:

- beginning and termination of the posting period,
- type of work to be performed during the posting,
- specification of the workplace,
- pay conditions during the posting.

The employee has to return to the domestic country after the end of the posting. Although the maximum period of employee posting is not defined, **the employee posting has to be limited by time.**

### Host employee protection

An important change to the Labour Code represents also introducing of **shared responsibility of the service provider** for the payment of salary to the subcontractor's employee (host employee) in Slovakia.

The host employee can claim the payment of due salary or its part from the natural person or legal entity who is provider of the service in Slovakia, whose direct subcontractor is the host employer. The host employer is obliged to provide information to providers of services in Slovakia required to review whether the host employer paid the due salary.

**Working conditions and conditions for employing a home employee are regulated by the law of the country to which the employee is posted to work.** So if you post employees to other EU member states you have obligation to verify these conditions and inform the employee about them in advance and in writing.

### Internal Market Information System

Internal Market Information system (IMI) was established based on the Directive 2006/123/EC on services in the internal market aiming at facilitating and accelerating administrative cooperation of relevant authorities of the EU member states and states which are party to the EEA Agreement.

**IMI is used to provide and verify information on migrating providers of services from the EU member states who provide services set forth by the Services Directive.**

Individual authorities of the EU member states thus themselves verify information and submitted documents by means of direct electronic communication.

**In the case of failure to perform any of the obligations, the imposed penalties can also be recovered in other EU member state,** i.e. if a penalty was imposed in the SR to a host employer, relevant Slovak authorities may ask for enforcement of a decision the respective authority of other EU member state. Similar principle will be also applied in other EU member states against Slovak businesses.

### **Find out how we can help you!**

We would be more than happy to offer you our services in this area, such as:

- Preparation of agreement on employee posting
- Analysis of mandatory obligations of the employer in the respective state
- Review of so-called hard core conditions of the state where the employee should be posted
- Registration of employees with the relevant authorities
- Representation of the employer as the designated liaison person for the delivery of documents and decisions in Slovakia
- Advisory and administrative support with local and international payroll taxes

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