

## Formal employer obligations for employees working abroad

Labour Code Amendment 2022, Slovakia

1 November 2022

The amendment also introduces a new Article 44a into the Labour Code, which transposes Article 7(1) of the Directive concerning the performance of an employee's work in a State other than the State in which the employee habitually works.<sup>1</sup> Please note that **this does not apply to the posting of an employee in the context of the cross-border provision of services by an employer within the** meaning of Article 5 of the Labour Code. In the case of the new Section 44a of the Labour Code, it will be the place of work from the beginning of the employment relationship and not a change of the agreed place of work.

The new Section 44a of the Labour Code **specifies both the mandatory elements of the employment contract and the information that the employer is obliged to communicate to such an employee, at the latest before the date of departure abroad.** An exception to the employer's notification obligation may be applied in situations where the employee's period of work abroad does not exceed four "consecutive" weeks.

For the sake of completeness, we would like to add that these specific elements of the employment contract, as well as the employer's notification obligations under Section 44a of the Labour Code towards an employee working abroad form a kind of superstructure to the general essential elements of the employment contract, as well as the general ones to the employer's notification obligations under Section 47a of the Labour Code - see the chapter "**EMPLOYMENT CONTRACT AFTER THE NEW**", "**TRANSPARENCY AND PREDICTABILITY OF WORKING CONDITIONS, INFORMATION OBLIGATIONS AFTER NEW.**"

It should be recalled that the relevant legal regulation was, until the date of entry into force of the amendment, partially contained in the framework of Section 43 of the Labour Code.

Text in force until 31 October 2022	Version effective from 1 November 2022
§ 43 (untitled) - paragraphs 5, 6.	(New) § 44a - Particulars of the employment contract and written information of the employer when performing work outside the territory of the Slovak Republic:
5 If the place of work is abroad, the employer shall further specify in the employment contract: a the period of work abroad,	1 If the place of performance of work is outside the territory of the Slovak Republic, the employer shall also agree with the employee in the employment contract:

<sup>1</sup> Note: The concept of habitual place of work is a concept of private international law - see Article 8 of the Rome I Regulation.

- b the currency in which the wages, or part thereof, will be paid,
  - c other benefits connected with the performance of work abroad in money or in kind,
  - d the conditions, if any, for the employee's return from abroad.
- 6 The information referred to in paragraph (5) shall be provided to the employee only if the period of employment abroad exceeds 1 month.
- a a) place of work in a state or states outside the territory of the Slovak Republic,
  - b (b) the period of work in a State or States outside the territory of the Slovak Republic.
- 2 If the place of performance of work is outside the territory of the Slovak Republic, the employer is obliged to provide the employee with written information at least to the extent of the following data, if they are not included in the employment contract:
- a the currency in which the wages or part thereof will be paid,
  - b an indication of other benefits connected with the performance of work in the State or in States outside the territory of the Slovak Republic in money or in-kind,
  - c an indication as to whether the staff member's repatriation is arranged and what conditions apply.
- 3 The employer shall provide the information pursuant to paragraph 2 before the employee leaves for the performance of work in a state outside the territory of the Slovak Republic.
- 4 The employer shall not be obliged to provide the information pursuant to paragraph (2) if the period of work in a State or States outside the territory of the Slovak Republic does not exceed 4 consecutive weeks.
- 5 Section 47a of the Labour Code shall not be affected by the provision of information pursuant to subsection (2).

## WHAT WILL THESE CHANGES BRING TO YOUR PRACTICE?

### EXISTING EMPLOYMENT CONTRACTS/CURRENT STAFF

Under the transitional provisions of Section 252s of the Labour Code, it will not be necessary in this context to modify or supplement existing employment contracts concluded by the employer with employees working abroad in any special way. However, if an existing employee expressly requests the employer to supplement the information to which he/she is newly entitled (and which is not contained in his/her existing employment contract), the employer will be obliged to do so within one month of the employee's request.

### NEW EMPLOYMENT CONTRACTS/NEW STAFF

The new provision of Section 44a of the Labour Code will, in our opinion, in particular have the significance that it will set out additional mandatory information that the employer will be obliged to include in the newly concluded employment contract in the event that it establishes an employment relationship with an agreed place of work of the employee in a foreign country.

In such circumstances, the place and period of work in the other State(s) will have to be explicitly stated in the employment contract. In addition, the employer will be subject to an extended information obligation, i.e. they will not only have to inform the employee about the amount of leave, due date of payment of wages, etc. (pursuant to Article 47a of the Labour Code), but also about the currency in which the wages will be paid and other benefits. The fulfilment of this information obligation can also be regulated in the employer's

internal regulations, while under the new Section 38a of the Labour Code, the employer can also provide this information to the employee in electronic form (which seems to be a more favourable option, especially if the potential employee is already abroad).

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