

Bird & Bird & Employment & Central Eastern Europe

Czech Republic, Hungary, Poland & Slovakia



A hand in a dark sleeve holds a newspaper, with a blurred background of office equipment like a printer and keyboard.

“ Bird & Bird is ‘a very special firm with an outstanding focus on its clients, a great business sense and a lot of experience’. The firm is particularly active in information technology, media, life sciences, electronics, aviation and automotive.

EMEA Legal 500, Czech Republic, 2016

“

Central Eastern Europe & Complexity

Bird & Bird is one of the few international law firms to have a presence in the four key CEE markets of Poland, Czech Republic, Slovakia and Hungary led by strong, personable and highly-experienced local teams supported by an international network of over 80 employment lawyers across Europe, the Middle East and Asia.

The Central European Employment Group also works closely together with our other practice groups, including with our Commercial and Corporate Groups on work related to domestic and international transactions and outsourcing, our Data Protection Group on issues related to protection and transfer of employee's personal data and privacy, back-ground checks, and with our Dispute Resolution Group on contentious employment matters.

Our ability to provide regional insight on domestic matters, working closely with other practice groups and seamless collaboration between our offices

make the Central European Employment Group ideally positioned to support CEE companies and international organizations with operations in the CEE region and those looking to invest in the region.

If you would like more information on our CEE capabilities, or support on a particular employment issue in the region, please do not hesitate to contact one of our team.

“Bird & Bird is ‘one of the strongest law firms working within Eastern Europe’.”

EMEA Legal 500, 2013



Local expertise across CEE

In all countries within the CEE region, employment-related rules are incorporated into unified Labour Codes, which usually take a relatively conservative approach towards employees. Most of the CEE countries' national labour laws have continued to be vastly employee-protective and rigid in certain areas. Also, non-compliance with labour law regulations can have serious legal and financial repercussions for employers.

However, irrespective of common historical and geographical features, it would be a mistake to classify the CEE countries as a single coherent region, where business practices in one country can be translated seamlessly across borders to neighbouring jurisdictions. Each CEE country has its own individual detailed and complex legislative framework.

Also, there have been some development and changes showing a desire to improve the flexibility, performance and competitiveness of the CEE workforce not only due to EU law development and harmonisation requirements, but also as a result of competition among the CEE countries to attract foreign direct investment not only based on lower employee costs.

This guide intends to provide a first glance at the employment and labour legislation in the **Czech Republic, Poland, Slovakia and Hungary** as well as to help employers navigate their way through certain key employment law considerations in relation to the CEE region.

As employment law is nationally regulated, it is not possible to set out the position in each jurisdiction in full detail – instead we have aimed to create a user-friendly introduction to key employment terms and conditions, and have generalised positions in many cases. We therefore strongly suggest that investors seek in-depth employment law advice before making a decision on any of the issues outlined in this guide.



The maximum length of fixed-term employment is quite different in each CE country. In Hungary, the cumulative maximum of such employment is five years, which is relatively long but still less than nine years in the Czech Republic or six years in Slovakia.



“Bird & Bird handles employment litigation, as well as advisory and transactional work.”

EMEA Legal 500, Hungary, 2015

CEE Employment capability

Regional knowledge, international network

With offices in the Czech Republic, Hungary, Poland and Slovakia we are ideally positioned to support international organisations with operations in the Central Eastern European region and those looking to invest here.

One of our key strengths is our enthusiastic, practical and flexible approach. Often there is a range of options to consider and a different level of risk associated with each. We see our role as working closely with clients to identify available options and risks in order to find solutions which meet their business objectives.

Working with both large and small corporations and individuals throughout the private and public sectors, we offer clients a comprehensive range of legal advice across the full spectrum of contentious and non-contentious employment law. Each of our offices is staffed with employment lawyers enabling us to provide advice on national employment legislation in addition to international employment directives.

Employment expertise

We pride ourselves on our ability to provide regional insight on domestic matters, in addition to top level cross-border and international HR strategy advice. We collaborate seamlessly between our offices to offer clients a comprehensive range of employment law advice including:

- Board and senior level appointments
- Collective consultation
- Employment disputes
- Equality and diversity
- Outsourcing
- Policies, practice and in-house documentation and scoping
- Restrictive covenant and protecting business interests
- Restructuring

“The lawyers are excellent at analysing the situation and are creative problem solvers. They always know what to do.”

Chambers Europe, Poland, 2015



Key employment areas

Types of Employment

Engaging an individual for work in CEE countries may take place in many different forms to provide an arrangement that suits both parties.

At least two other alternatives may also be available (or in some professions or positions, mandatory):

- self-employed persons , i.e. a 'contractor'; or
- persons engaged under a 'mandate contract' or similar,

neither of which is an 'employment' contract governed by the Labour Code.

For example, in most CEE countries board members are not engaged in their positions under employment contracts, but under mandate agreements governed by applicable Civil and/or Commercial Codes.

Also, certain businesses tend to engage contractors to carry out its business activities due to several advantages over the 'employment' relationship (more favourable tax regime and strict employment regulation, e.g. Labour Code rules on termination do not apply). However, engaging contractors for activities which have the characteristics of employment may be re-classified by the relevant authorities as employment contracts. Such a decision of the authorities could also mean that the company has to pay substantial fines, as well as all unpaid employee taxes, and health and social security contributions from the start of the relationship. It is therefore wise to seek professional guidance when engaging a contractor for regular business activities so that such reclassification can be avoided.

The following sections focused on regular employment contracts rather than agreements governed by legal regulations other than the Labour Code.



Recruitment & Discrimination

When hiring employees, special regard must be given to non-discrimination requirements. Generally in the CEE, discrimination refers to the prejudicial treatment of different groups of people based on certain characteristics, such as race, skin colour, gender, national origin, religion, mental or physical disability, age, sexual orientation etc. Risk of discrimination should not arise only if distinction made is reasonable and this can be justified by objective reasons.

In some CEE countries there is also a separate act prohibiting discrimination in employment matters including job advertisements, recruitment processes and treatment during employment (such as benefits provided) by the employer. This provides that if there is a breach of non-discrimination rules, damages are payable by the employer.

As a general rule, the employer may not request any information which does not directly relate to the performance of the job or the employment relationship.



Questions you should never ask candidates during interviews in the CEE

- Do you have a partner?
- Do you have children?
- What age are your children?
- What is your future plan concerning your family status?
- What is your sexual orientation?
- What is your current financial situation?
- Do you belong to any religious group/any political party?
- Are you a member of trade unions?
- Do you have any unpaid dues?
- Have you ever been prosecuted?
- Do you smoke?
- Do you drink alcohol?

This is why issues related to the possibility of backgrounds checks on candidates and employees are of interest to many employers in CEE.



Employee Representatives

Electing employee representatives is not an obligation imposed on employers, but merely a right for employees, with no major negative consequences for employers if none are appointed. Employee representatives may take the form of (i) Works Council, (ii) trade union representatives, or (iii) other employee representatives subject to national or EU laws.

Employee representatives have varying degrees of influence, from the right to co-decision, to being consulted or to merely being informed on specific matters. Although rights of trade unions and Works Councils may be formally deemed to be strong, in practice these are usually not enforced in full or at all, apart from the activity of employee representation bodies in big corporations, or in former or current State-owned companies. Requirements vary between countries.

Co-decision right

This applies usually to employment matters concerning the member of the employee's representation group employee representative (e.g. requirement for trade unions approval for terminating the employment of its board member in the Czech Republic).

Right to be consulted

This right extends to measures having an impact on a significant number of employees, in particular organisational and restructuring measures, changes to the working conditions of employees, employment termination, automatic transfer of employees in case of business transfers, mass dismissals, etc.

In most cases, the consultation must be carried out "with a view to reach an agreement" where absolute consensus is not required.

Right to be informed

The right to be informed is again very similar, as it forms the basis of the above more extensive rights. It therefore equally applies to all measures affecting a significant number of employees.

Employment contracts in CEE Countries

Generally, employment contracts should be in writing and can be invalid if certain mandatory elements are missing.



Subject to national variation, CEE employment contracts should at least include the following:

- Type of work
- Place of work
- Start date
- Base salary
- Salary conditions
- Working time

Parties may agree on an initial probation period, during which either party may terminate the employment with immediate effect, and without giving a reason for the termination. Employment contracts can be entered into for fixed or indefinite periods.

Employment contracts may contain provisions which deviate from the general rules of the Labour Code. However, such deviations may be more favourable only to employees (e.g. longer annual leave, greater overtime premium, etc.) than the corresponding Labour Code rules. Should any provision be less favourable, they will be automatically void and replaced by the relevant provisions of the Labour Code or other regulations.

Specific requirements relating to working conditions are governed by national laws. Please see below a short country overview of key employment terms and conditions.



In Hungary, employees are entitled to payment for all days when on sick-leave, receiving the same payment amount for each day. However, in the Czech Republic and Slovakia, employees do not receive any payment or receive significantly less payment for the first three days of sick-leave.

Employment disputes

The employee and employer may solve any disputes amicably among themselves or by way of court proceedings which, however, are quite lengthy in all four countries. Moreover, the entire court procedure may be very demanding – both in terms of time and efforts.

In the Czech Republic and Poland, there are no specific employment tribunals, as opposed to Hungary where there are specific public administration and labour tribunals, and Slovakia where proceedings take place before specific employment tribunals as of July 2016.

In general, the courts in the Czech Republic tend to be pro-employee, although the Czech Labour Code does not provide for any specific grievance procedures concerning employment matters of the employees.

In Poland, despite the general rule that the claimant (in most cases the employee) must prove his or her rights, it is recommended that any employer taken to court would adopt a "proactive" court defence strategy.

Employment disputes before the courts in Slovakia are considered to be disputes where on one side of the dispute stands an employee as a "weaker" party unless the employee is represented before the court by an attorney. Therefore courts have an instructing obligation towards the employees on their rights as the party to the dispute and may also take over the initiative in obtaining supporting evidence instead of employees. Employees may be also represented before the court by trade union representatives.

The vast majority of court disputes in all four countries relate to validity of employment terminations, employers motivated to seek justice in case of serious breach of corporate values (Codes of Conduct), fraud, confidentiality breach or non-competition obligations.







The statutory maximum overtime ordered by the employer is similar in the four CEE countries. However, the maximum of the additional overtime is significantly lower in Hungary than in the other three countries.

“Bird & Bird’s clients are predominantly international organisations active in Central Europe.”

EMEA Legal 500, Slovakia, 2015



| |  CZECH REPUBLIC |  HUNGARY |
|---------------------------------------|--|--|
| PROBATION PERIOD | <ul style="list-style-type: none"> - Must be agreed in writing before commencing work - Max. of 3 months, and 6 months for managerial employees | <ul style="list-style-type: none"> - Must be agreed in the employment contract in writing - Max. of 3 months or 6 months if regulated by collective agreement |
| FIXED-TERM EMPLOYMENT | <ul style="list-style-type: none"> - Must be expressly agreed otherwise employment seen as for an indefinite period - May be agreed for up to 3 years and later extended or re-agreed only twice (i.e. 9 year cumulative max.) - Several fixed-term contracts will be aggregated unless they are more than 3 years apart | <ul style="list-style-type: none"> - Must be expressly agreed otherwise employment seen as for an indefinite period - May be agreed for up to 5 years including any re-agreement or extension (cumulative maximum) - Any extension or re-agreement within 6 months from the termination is subject to the legitimate interest of the employer |
| WORKING TIME AND OVERTIME WORK | <ul style="list-style-type: none"> - Regular working time: 8 hours/day and 40 hours/week - Overtime work beyond the set weekly working time may be ordered in exceptional cases due to serious operational reasons only - Statutory max. overtime ordered by the employer: 8 hours/week, 150 hours/year - Extension possible up to a max. of 416 hours/year; in any event no more than 8 hours a week as calculated over a period of 26 consecutive weeks (or 52 consecutive weeks if specified in the collective agreement) - Employees entitled to a premium of at least 25% of average salary (employee and employer may agree on time off in lieu) | <ul style="list-style-type: none"> - Regular working time: 8 hours/day and 40 hours/week - Overtime beyond the work schedule may be ordered subject to certain exceptions and must be ordered in writing if requested so by the employee - Statutory max. overtime ordered by the employer: 250 hours / calendar year or 300 hours / calendar year if regulated by collective agreement - Employees are entitled to overtime compensation equalling 50% of base salary (or time off in lieu if agreed by the parties or regulated by collective agreement or laws) |
| HOLIDAYS AND SICKNESS | <ul style="list-style-type: none"> - Min. statutory holiday of 4 weeks, i.e. 20 business days /year - Employer determines when holiday is taken and must provide time for holiday to be taken by an employee in one calendar year - Compensation for unused holiday possible in connection with termination of employment only - No pay for the first three (3) days of sickness, employer pays days 4 – 14, thereafter sickness pay payable though the social security system | <ul style="list-style-type: none"> - Min. statutory holiday is 20 days/year which increases gradually depending on the employee's age - Employer determines when holiday is taken in consultation with the employee - Compensation of accrued but not taken holiday is possible in connection with termination of employment only - Employee is entitled to 15 days of sick leave per calendar year and the employer pays 70% of the absence fee for these days, thereafter sickness pay payable though the social security system |
| EMPLOYMENT TERMINATION | <ul style="list-style-type: none"> - Limited scope for dismissing employees and many formalities (e.g. precise specification of the termination reason in the written notice) - Possible only based on statutory grounds expressly stated in the Labour Code: <ul style="list-style-type: none"> o employee redundancy due to closure, relocation or operational business reasons of the employer o employee health reasons o failure by employee to comply with requirements set by law or the employer for performance of work o underperformance or breach of obligations by the employee - Notice period: 2 months, commencing on the first day of the calendar month following the month in which the notice was delivered to the employee - Immediate termination possible due to exceptionally gross misconduct only | <ul style="list-style-type: none"> - Limited scope for dismissing employees and many formalities (e.g. precise specification of the termination reason in the written notice, information about right to remedy) ordinary termination is possible only based on statutory grounds expressly stated in the Labour Code: <ul style="list-style-type: none"> o reason related to the behaviour of the employee, o reason related to the lack of skills, underperformance of the employee, o reason related to the operation of the employer (e.g. workforce redundancy, reorganisation) - Notice period: 30 days (max. 6 months upon the parties' agreement), however, it increases gradually based on the years spent at work by the employee in case of termination by the employer - Termination with immediate effect is possible only due to material breach of substantial obligations wilfully or with gross negligence, and must be handed over within 15 days as from the date of becoming aware of the reason (but max. within 1 year from the occurrence of the reason) |
| REDUNDANCY AND SEVERANCE PAY | <ul style="list-style-type: none"> - Employee entitled to statutory severance pay as well as payment of normal salary during the notice period - Statutory severance pay varies based on the length of service: <ul style="list-style-type: none"> o 1 average monthly salary for employment of less than 1 year o 2 average monthly salaries for employment between 1 and 2 years o 3 average monthly salaries for employment exceeding 2 years - In case of employment termination due to employment related injury of illness the employee is entitled to severance pay of 12 times his average monthly salary | <ul style="list-style-type: none"> - Employee entitled to payment for the notice period including payment of absence fee for the garden leave period - Statutory severance pay is payable based on the length of service: <ul style="list-style-type: none"> o 1 month absence fee for employment of at least 3 years o 2 months absence fee for employment of at least 5 years o 3 months absence fee for employment of at least 10 years etc. |
| RESTRICTIVE COVENANTS | <ul style="list-style-type: none"> - During employment, the employee must refrain from any activity for compensation which would be "identical" with or "of a competing nature" to the employer's business activity - Post-termination non-compete obligation, if agreed in writing, may last up to 1 year whereby the employer must pay at least half of the average monthly salary for each month of non-competition | <ul style="list-style-type: none"> - During employment, the employee must refrain from any activity which would jeopardise the legitimate business interest of the employer - Post-termination non-compete obligation may last up to 2 years whereby the employer must pay at least one-third of the monthly base salary for each month of non-competition |

| |  POLAND |  SLOVAKIA |
|---------------------------------------|---|---|
| PROBATION PERIOD | <ul style="list-style-type: none"> - Max. of 3 months, including managerial employees - Notice period: 3 days to 2 weeks depending on probation period | <ul style="list-style-type: none"> - Must be agreed in writing before commencing work - Max. of 3 months and 6 months for managerial employees |
| FIXED-TERM EMPLOYMENT | <ul style="list-style-type: none"> - Must be expressly agreed otherwise employment seen as for an indefinite period - May be agreed for up to 33 months and in general no more than three (3) consecutive contracts, unless specific circumstances are involved - National Labour Inspectorate must be notified about contracts executed for more than 33 months | <ul style="list-style-type: none"> - Must be expressly agreed otherwise employment seen as for an indefinite period - May be agreed for up to 2 years and later extended or re-agreed only twice within two years (i.e. 6 years cumulative maximum) - Several fixed-term contracts will be aggregated unless they are more than 6 months apart |
| WORKING TIME AND OVERTIME WORK | <ul style="list-style-type: none"> - Regular working time: 8 hours/day and 40 hours/week on average in 5 working day week - Overtime may be ordered in exceptional cases due to serious operational reasons only - Statutory max. overtime ordered by the employer: 8 hours/week, 150 hours/year - Extension possible up to a max. of 416 hours/year; in any event no more than 8 hours a week in the settlement period adopted by the employer (additional compensation for over-time differs from 25% up to 150% of the salary) | <ul style="list-style-type: none"> - Regular working time: max. 8 hours/day and 40 hours/week - Overtime work beyond the set weekly working time may be ordered in exceptional cases due to serious operational reasons only - Statutory max. overtime ordered by the employer: 150 hours/year - Extension possible based on agreement with the employee representatives up to a max. of 400 hours/year; in any event no more than 8 hours a week as calculated over a period of 4 consecutive months (or 12 consecutive months if specified in the collective agreement) - Employee entitled to a premium of at least 25% of average salary (employee and employer may agree on time off in lieu) |
| HOLIDAYS AND SICKNESS | <ul style="list-style-type: none"> - Min. statutory holiday 20 or 26 days/year, depending on years of service - Unused holiday is automatically carried over to the next calendar year - Compensation for unused holiday should be paid with termination of employment only - Sickness pay paid by the employer for 14 – 33 days (in most cases 80% of the salary), then the State takes over this responsibility | <ul style="list-style-type: none"> - Min. statutory holiday of 4 weeks, i.e. 20 business days /year - Min. statutory holiday for employee over 33 years of age is 5 weeks, i.e. 25 business days/year - If holiday taken in parts, at least one part of statutory holiday must be min. of 2 weeks - Compensation of accrued but not taken holiday possible in connection with termination of employment only - Sickness benefit in first 3 days equals 25% of the daily assessment basis, from 4 - 10 days of sickness equals 50% of the daily assessment basis, after the 11th day up to 52 weeks of temporary working incapacity (sickness) benefit is payable through the social security system |
| EMPLOYMENT TERMINATION | <ul style="list-style-type: none"> - Limited scope for dismissing employees and many formalities (e.g. precise specification of the termination reason in the written notice) - Notice period: from two (2) weeks up to three (3) months, commencing on the first day of the calendar month following the month in which the notice was delivered to the employee - Immediate termination possible due to exceptionally gross misconduct only | <ul style="list-style-type: none"> - Precise specification of the one of termination reasons must be stated in the written notice or agreement: <ul style="list-style-type: none"> o employee redundancy due to closure, relocation or operational business reasons of the employer o employee health reasons o failure by employee to comply with requirements set by law or the employer for performance of work o underperformance or breach of obligations by the employee - Min. notice period: 1-3 months, depending on the termination reason and length of employment, commencing on the first day of the calendar month following the month in which the notice was delivered to the employee - Immediate termination possible due to exceptionally gross misconduct and final criminal sentence of the employee only |
| REDUNDANCY AND SEVERANCE PAY | <ul style="list-style-type: none"> - Employee entitled to statutory severance pay as well as payment of normal salary during the notice period - Statutory severance pay varies based on the length of service: <ul style="list-style-type: none"> o 1 average salary for employment of less than 2 years o 2 average salaries for employment between 2 and 8 years o 3 average salaries for employment exceeding 8 years - Statutory severance is capped at max. 15 times min. statutory wage | <ul style="list-style-type: none"> - Employee entitled to statutory severance pay as well as payment of normal salary during the notice period - Statutory severance pay varies based on the length of service and method of employment termination - Termination by notice: <ul style="list-style-type: none"> o min. 1 average monthly salary for employment of more than 2 years and less than 5 years o min. 2 average monthly salaries for employment between 5 and 10 years o min. 3 average monthly salaries for employment between 10 and 20 years o min. 4 average monthly salaries for employment exceeding 20 years - Termination by agreement: <ul style="list-style-type: none"> o min. 1 average monthly salary for employment of less than 2 years o min. 2 average monthly salaries for employment between 2 and 5 years o min. 3 average monthly salaries for employment between 5 and 10 years; o min. 4 average monthly salaries for employment between 10 and 20 years o min. 5 average monthly salaries for employment exceeding 20 years - Termination due to employment related injury of illness - 10 times average monthly salary. |
| RESTRICTIVE COVENANTS | <ul style="list-style-type: none"> - General statutory obligation to protect "interests of the employer" and "trade secrets" only, thus more specific contractual provisions are recommended - Post-termination non-compete obligation, if agreed in writing, enforceable only if compensated (min. 25% of monthly salary) | <ul style="list-style-type: none"> - During employment, the employee may perform any other earning activity "of competing nature" to the employer's business activity only with the prior written consent of the employer - Restriction of such earning activity may be compensated to the employee with a min. 50% of average monthly earnings based on the agreement with the employee |

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